

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7366

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 75-7366

B

DON R. DASEKE, ET AL.,

Plaintiffs-Appellants

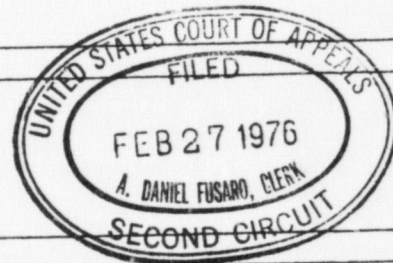
vs.

ABRAHAM & CO., INC., ET AL.,

Defendants-Appellees

On Appeal From The United States District Court
For The Southern District of New York

JOINT APPENDIX



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DON R. DASEKE, ET AL., vs. ABRAHAM & CO., INC., ET AL.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
DON R. DASEKE, MARY R. DASEKE
AND MARGARET M. DASEKE D/B/A
DASEKE OPTION ASSOCIATES AND
DASEKE INVESTMENT ASSOCIATES,

Plaintiffs,

-against-

ABRAHAM & CO., INC., MERKIN & CO.,
INC., CARL SLOVE, JOSEPH A. GOTTLIEB
AND JULIUS CHERNY,

Defendants.
----- X

:
: 74 CIVIL NO. 4457

:
: VERIFIED COMPLAINT

:
: Judge Wyatt

Plaintiffs, by their attorneys for their verified com-
plaint respectfully allege:

FIRST COUNT

1. This is a civil action for damages arising under the Securities Exchange Act of 1934, as amended, (15 U.S.C. §78a, et seq.) (the "1934 Act") and the Rules and Regulations promulgated thereunder, particularly Sections 6, 7, 10(b), 19, 20 and 29 (15 U.S.C. §§78f, 78g, 78j(b), 78s, 78t and 78cc) and Rules 10b-3, 10b-5 and Regulation T of the Regulations of the Board of Governor's of the Federal Reserve System (12 C.F.R. §220) ("Reg. T") and the laws and statutes of the State of New York. This court has jurisdiction under 15 U.S.C. §78aa, 78bb; and the doctrine of pendent jurisdiction.

2. Venue lies in the Southern District of New York under 15 U.S.C. §78aa since all the defendants transact business within the District.

3. Plaintiffs Don R. Daseke and Mary R. Daseke reside at 32 Mimosa Drive, Greenwich, Connecticut and at all times relevant to this complaint have been and still are residents of the State of Connecticut.

4. Plaintiff Margaret M. Daseke resides at 29 Crossways, Chappaqua, New York and at all times relevant to this complaint has been and still is a resident of the State of New York.

5. Plaintiff Daseke Option Associates ("DOA") is an investment partnership whose sole general partners are Don R. Daseke and Mary Ruth Daseke. Plaintiff's principal place of business is 6 Corporate Park Drive, White Plains, New York.

6. Plaintiff Daseke Investment Associates ("DIA") is an investment partnership whose sole general partners are Don R. Daseke and Margaret M. Daseke. Plaintiff's principal place of business is 6 Corporate Park Drive, White Plains, New York.

7. Defendant Abraham & Co., Inc. ("Abraham") is a Delaware corporation having its main office at 120 Broadway, New York, New York. Abraham is a registered broker dealer under the Federal Securities laws and a member organization of the New York Stock Exchange.

8. Defendant Merkin & Co., Inc. ("Merkin") is a New York corporation having its main office at 100 Wall Street, New York, New York. Merkin is a registered broker dealer under the Federal Securities laws and a member organization of the New York Stock Exchange.

9. Defendant Joseph A. Gottlieb is Senior Vice President of defendant Abraham and at all times relevant to this complaint has been and still is a resident of New York.

10. Defendant Carl Slove is a registered representative of defendant Merkin and at all times relevant to this complaint has been and still is a resident of New York.

11. Defendant Julius Cherny was Vice President of defendant Merkin and at all times relevant to this complaint has been and still is a resident of New York.

12. In June 1973 plaintiffs entered into an arrangement with Carl Slove, representing Merkin, and Abraham to open securities accounts for plaintiffs (the "Accounts"). Under this arrangement plaintiffs signed customer agreements with defendant Abraham who was to carry the Accounts on its books.

13. Pursuant to this arrangement, all of plaintiff's orders were routed through Merkin and then executed by Abraham. Upon information and belief all administrative and billing functions were handled by Abraham.

14. Upon opening the Accounts, plaintiffs executed certain margin and option agreements required by defendants. These agreements provided, inter alia, that the Accounts would be subject to all applicable rules, regulations, customs and usages of the New York Stock Exchange and the Chicago Board of Options.

15. The Accounts are margined option writing accounts. Plaintiffs purchase and sell securities on margin and write "put" and "call" options on various securities.

16. In connection with transactions in the Accounts, defendants were required to comply with applicable federal law and regulations as well as the margin rules and regulations of

the Federal Reserve Board, the New York Stock Exchange and so-called house margin rules of defendants. In particular, the defendants were required to adhere to Section 7 of the Securities Exchange Act of 1934 and the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, more specifically Regulation T, 12 C.F.R. §220 ("Reg. T") and New York Stock Exchange Rule 431.

17. Reg. T places on defendants' an absolute affirmative duty to notify plaintiffs as soon as the Accounts become undermargined. If within five days after this notice plaintiffs have not sold enough securities or transferred additional equity into the Accounts to restore the required margin level the regulation mandates that defendants must immediately cancel any transactions insofar as it is necessary to bring them into compliance and restrict further dealings in the Accounts.

18. Defendants in direct violation of Reg. T failed to notify plaintiffs when the Accounts first went into undermargined status. Thereafter, defendants failed to provide plaintiffs with current information concerning the margin status and permitted plaintiffs to transact in the Accounts in violation to Reg. T.

19. On the occasions when plaintiffs were notified that the Accounts were undermargined no action was taken by the plaintiffs within the seven day time period provided by Reg. T. Despite plaintiffs' inaction defendants in violation of Reg. T. did not immediately liquidate the Accounts.

20. During the period September 1973 to April 1974, Defendants solicited and/or executed numerous orders to purchase securities for the Accounts while they were in an undermargined

status, and therefore each such action was in violation of the aforementioned laws, rules, regulations, customs and usages.

21. Notwithstanding their duty to constantly monitor the margin position of the Accounts to assure compliance with Reg. T and other applicable rules and regulations, defendants reported the margin position for each of the Accounts to Plaintiffs only 5 times in the eight month period from September 1973 to May 1974.

22. Even on these few occasions, it appears that defendants erroneously computed the margin status of the Accounts, as more particularly set forth in paragraphs 23 through 25 hereof. As a consequence of defendants' erroneous calculations and breach of their duty to plaintiffs, plaintiffs were not properly informed as to the margin status of the Accounts and the fact that the Accounts were in violation of Reg. T.

23. In addition to the generally erroneous calculations referred to in paragraph 22 hereof, defendants failed to compute the plaintiffs' short accounts at the market value of their short positions ("mark to the market") as required by Reg. T. As a result, plaintiffs' margin indebtedness was consistently understated.

24. Defendants failed to obtain "substantial additional margin" on options maturing more than 6 months and 10 days from the date of issuance and on securities that may be difficult to liquidate promptly in violation of Rule 431(d)(1) and (2) of the New York Stock Exchange.

25. Defendants failed to recompute the margin status of the Accounts when transactions in the Accounts transformed

existing option contracts into unhedged or "naked" options and failed to secure additional margin required as a result thereof.

26. Defendants permitted plaintiffs to withdraw \$10,000 and \$2,500 from the Accounts on September 6, 1973 and October 12, 1973, respectively, thereby representing that the Accounts were in margin compliance and inducing plaintiffs to continue their option writing activities. In fact, the Accounts were in margin violation at the time of the October withdrawal and there may have been a deficit in the Accounts' equity position. Defendants similarly misled plaintiffs as to the margin status of the DOA account by permitting plaintiffs to withdraw \$6,000 from the DOA account on May 22, 1974.

27. If defendants had promptly notified plaintiffs of the margin violations and had expeditiously implemented the remedial course of action mandated by Reg. T. plaintiffs would have secured more favorable prices for securities disposed of to reduce margin indebtedness and their equity in the Accounts would have been protected.

28. Defendants' failure to comply with Reg. T caused plaintiffs additional damages by reason of increased interest expense and substantial brokerage fees charged to the Accounts.

SECOND COUNT

1-28. Plaintiffs hereby incorporate by reference paragraphs 1 through 28 inclusive of the First Count of this Complaint and reallege said paragraphs as paragraphs 1 through 28 of this Count.

29. The foregoing acts of the defendants which are in violation of New York Stock Exchange Rule 431, and Sections 6 and 19 of the 1934 Act.

THIRD COUNT

1-28. Plaintiffs hereby incorporate by reference paragraphs 1 through 28 inclusive of the First Count of this Complaint and reallege said paragraphs as paragraphs 1 through 28 of this Count.

30. The foregoing acts of the Defendants are in violation of various sections of the 1934 Act, and therefore the customer agreements between Defendants and Plaintiffs have been and are hereinafter void under §29 of the 1934 Act. Plaintiffs thus are relieved of all past and future responsibilities under said agreements. In particular, all brokerage fees, interest and other charges assessed by defendants and paid by the plaintiffs in connection with the aforementioned illegal activities should be immediately refunded with interest.

FOURTH COUNT

1-28. Plaintiffs hereby incorporate by reference paragraphs 1 through 28 inclusive of the First Count of this Complaint and reallege said paragraph as paragraphs 1 through 28 of this Count.

31. The foregoing acts of defendants were manipulative and deceptive devices whose purpose was to defraud plaintiffs in violation of Section 10(b) of the 1934 Act and the rules promulgated thereunder, specifically Rules 10b-3 and 10b-5. This is evidenced by the numerous actions undertaken by defendants hereinbefore and hereinafter set forth which neither benefited Plaintiffs nor brought the Accounts into compliance with the applicable rules and regulations. The sole purpose of these actions was to benefit defendants and promote their financial gain in derogation of plaintiffs' legal rights and financial positions.

32. Plaintiffs, in October of 1973, when finally notified of the undermargined status of the Accounts, approached defendants to discuss the matter. Defendants assured plaintiffs that no corrective action need be taken in respect to these accounts and allowed them to continue their investment program aimed at improving the Accounts positions.

33. These representations by defendants induced plaintiffs to execute numerous additional transactions in regard with the Accounts and to refrain from asserting their right to liquidate the Accounts on their own terms.

34. Then in May of 1974 defendants unilaterally and precipitously implemented a liquidating course of action with respect to the Accounts, purportedly to bring them into margin compliance. These actions were in total contradiction to all of the defendants prior representations and course of conduct and without reason as there had been no deterioration of the equity in the Accounts.

35. This course of action in fact worsened the margin status of the Accounts, substantially eroded plaintiffs' equity, and was in violation of applicable custom and usage.

36. With a diligent and patient effort, plaintiffs accumulated almost 10% of the outstanding warrants of Braniff Airways, a security listed on the American Stock Exchange, thereby becoming one of the largest holders of this issue. Because of the short supply available for trading, it was under the circumstances necessary to make these purchases over a two year period.

37. Without authorization defendants sold practically the entire position in less than a 30 day period. This action by

defendants failed to secure the most advantageous prices and caused plaintiffs the loss of their position, which cannot be replaced without substantial expense.

38. Without the approval or authorization of plaintiffs, defendants debited the Accounts in the amount of approximately \$94,000 to purchase call options on Common Stock of American Motors Corp., Braniff Airways and Loews, Inc. to cover outstanding call options written by the Accounts. These actions were taken contemporaneously with defendants' sales of various securities of these issuers from the Accounts which were covering such outstanding options.

39. The aforementioned debits, which increased the Accounts' margin indebtedness, would not have been required had defendants not sold said securities. Defendants stated these actions were necessary to bring the Accounts into margin compliance. In fact, these unauthorized and illogical actions resulted in reducing both the dollars and the percentage of equity in the Accounts.

40. Defendants liquidated the Accounts in such a manner as to cause plaintiffs significant additional risk and possible future damages from outstanding option contracts which were negligently and willfully left exposed to future market fluctuations.

41. Defendants refused to utilize the services of non-member brokerage firms ("third-market" brokers) to execute certain transactions for the Accounts. The services of such brokers would have substantially reduced the commission dollars paid by Plaintiffs to Defendants and possibly would have resulted in the reali-

zation of more favorable purchase prices for the liquidated securities.

42. These courses of action were implemented by defendants for their benefit, in total disregard of their duties to the plaintiffs and in such a way as to maximize commissions and interest paid by the Accounts.

43. Through said course of action defendants unnecessarily depleted plaintiffs' equity positions in the Accounts without any corresponding improvement in the margin status. As a result plaintiffs have suffered and will continue to suffer substantial economic losses in relation to the Accounts. There were alternative courses of action available to defendants which would have achieved a comparable reduction of margin indebtedness in the Accounts while preserving plaintiffs' equity position.

FIFTH COUNT

1-43. Plaintiffs hereby incorporate by reference paragraphs 1 through 43 inclusive of the Fourth Count of this Complaint and reallege said paragraphs as paragraphs 1 through 43 of this Count.

44. The aforementioned acts constitute negligent and reckless conduct on defendants' behalf.

SIXTH COUNT

1-43. Plaintiffs hereby incorporate by reference paragraphs 1 through 43 inclusive of the Fourth Count of this Complaint and reallege said paragraphs as paragraphs 1 through 43 of this Count.

45. The aforementioned acts were solely for the benefit and financial gain of defendants in violation of contractual duties owed to plaintiffs. Said actions were also an abuse of Defendants' fiduciary relationship with plaintiffs and constituted fraudulent conduct actionable under the laws of the State of New York.

WHEREFORE, Plaintiffs demands judgment against the Defendant as follows:

1. Damages in an amount in excess of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for the loss sustained by plaintiffs as alleged herein, and for such future losses as the evidence shows may be sustained by plaintiffs after the date of this Complaint.

2. An order requiring defendants to account and pay over to plaintiffs all brokerage fees, interest and other charges paid to them by plaintiffs in connection with the acts herein complained of.

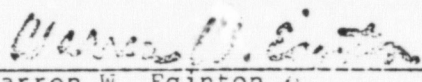
3. An order requiring defendants to restore plaintiffs' valuable position in Braniff warrants, or in the alternative, that defendants be required to compensate claimants for the loss of their valuable position.

4. Punitive damages in the sum of One Million Dollars (\$1,000,000).

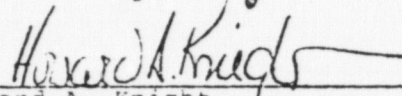
5. The costs and disbursements of this action, including attorneys' fees.

6. Such other and further relief of an equitable or legal nature, or both, as to the Court may seem just and proper.

Dated at Stamford, Connecticut, this 12th day of November,
1974.



Warren W. Eginton



Howard A. Knight

Attorneys for the Plaintiffs
Cummings & Lockwood
P.O. Box 120
One Atlantic Street
Stamford, Connecticut 06904
(203) 327-1700

LOCAL COUNSEL

Robert Conkling, Esq.
Bleakley, Platt, Schmidt & Fritz
120 Broadway
New York, New York 10005

VERIFICATION

STATE OF NEW YORK
COUNTY OF NEW YORK

)
) ss: City of New York
) November 12, 1974

DON R. DASEKE, being duly sworn, says that he is an individually named plaintiff and a general partner in both named investment partnership plaintiffs in the above-entitled proceedings; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

DON R. DASEKE

Subscribed and sworn to before
me this day of November, 1974.

Notary Public

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

DON R. DASEKE, MARY R. DASEKE
AND MARGARET M. DASEKE D/B/A
DASEKE OPTION ASSOCIATES AND
DASEKE INVESTMENT ASSOCIATES,

Plaintiffs,

-against-

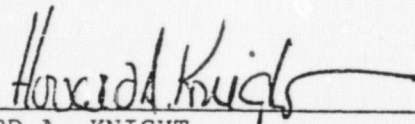
ABRAHAM & CO., INC., MERKIN & CO.,
INC., CARL SLOVE, JOSEPH A. GOTTLIEB
AND JULIUS CHERNY,

Defendants.

CIVIL NO. 74 Civ. 4957

DESIGNATION OF LOCAL COUNSEL

Pursuant to Rule 4(a) of the General Rules of the
United States District Court for the Southern District of
New York Robert L. Conkling, Esq. of Bleakley, Platt, Schmidt &
Fritz, 120 Broadway, New York, New York is hereby designated as
the person upon whom service may be made.


HOWARD A. KNIGHT
Attorney for Defendants
Office and P. O. Address
Cummings & Lockwood
One Atlantic Street
P. O. Box 120
Stamford, Connecticut 06904
203-327-1700

United States District Court

FOR THE
SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. _____

DON R. DASEKE, MARY R. DASEKE
AND MARGARET M. DASEKE D/B/A
DASEKE OPTION ASSOCIATES AND
DASEKE INVESTMENT ASSOCIATES,

Plaintiff s

v.

ABRAHAM & CO., INC., MERKIN & CO.,
INC., CARL SLOVE, JOSEPH A. GOTTLIEB
AND JULIUS CHERNY,

Defendant s

SUMMONS

To the above named Defendants :

You are hereby summoned and required to serve upon

Warren W. Eginton

plaintiff's attorney , whose address is

Cummings & Lockwood
One Atlantic St.,
Stamford, Connecticut 06904
P. O. Box 120

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court._____
Deputy Clerk.

Date:

[Seal of Court]

U.S. MARSHALS SERVICE
INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS" SERVICE OF PROCESS
BY THE U.S. MARSHAL on the reverse of the last (No. 5) copy of this
form. Please type or print legibly, insuring readability of all copies.
Do not detach any copies.

PLAINTIFF	COURT NUMBER
DOH R. DASEKE, ET AL	74645
DEFENDANT	TYPE OF WRIT
ABRAMS & CO. INC., ET AL	Summons
SERVE	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
→	THOMAS GIERMY
AT	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Warren W. Eginton
Cummings & Lockwood
One Atlantic Street
Stanford, Connecticut 06904

Show number of this writ and
total number of writs submit-
ted, i.e., 1 of 1, 1 of 3, etc.

NO. TOTAL
OF 5

CHECK IF APPLICABLE:

☐ One copy for U. S. Attorney or designee and
two copies for Attorney General of the U. S.
included.

SHOW IN THE SPACE BELOW AND TO THE LEFT
ANY SPECIAL INSTRUCTIONS OR OTHER
INFORMATION PERTINENT TO SERVING THE
WRIT DESCRIBED ABOVE

SPECIAL INSTRUCTIONS:

Initial Deposit:
Cost for Service:
Balance Due: DEC 1 1974

Please make remittance payable Please
to U. S. Marshal, SDNY, U.S. Court
Courthouse, Foley St., New York
NY, 10007

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR

TELEPHONE NUMBER

DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable
code) and sign USM-285 for first writ
only if more than one writ submitted.

DEPOSIT/CODE

DIST. OF
ORIGIN

DISTRICT
TO SERVE

LOCATION OF SUB-OFFICE OF DIST. TO SERVE

I acknowledge receipt for the total number of
writs indicated and for the deposit (if appli-
cable) shown.

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK

DATE

☐ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in
"REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual,
company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc.,
named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)

☐ A person of suitable age and
discretion then abiding in the
defendant's usual place of abode.

ADDRESS (Complete only if different than shown above)

FEE (If applicable)

MILEAGE

\$

\$

DATE(S) OF ENDEAVOR (Use Remarks if necessary)

DATE OF SERVICE

TIME

AM
PM

SIGNATURE OF U. S. MARSHAL OR DEPUTY

REMARKS

U.S. MARSHALS SERVICE
INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS" SERVICE OF PROCESS
BY THE U.S. MARSHAL on the reverse of the last (No. 5) copy of this
form. Please type or print legibly, insuring readability of all copies.
Do not detach any copies.

PLAINTIFF JOHN P. DASEKE, ET AL	COURT NUMBER 74CJ4957
DEFENDANT BRANHAM & CO. INC., ET AL	TYPE OF WRIT Writ of Sequestration

SERVE →	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN BRANHAM & CO. INC.
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 130 Broad Street, New Britain, Conn.

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Warren W. Eginton
Cummings & Lockwood
One Atlantic Street
Stamford, Connecticut 06904

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.	NO. OF	TOTAL
CHECK IF APPLICABLE: <input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.		
SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.		

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR A. G. ...	TELEPHONE NUMBER 203 327-5000	DATE 11/12/72
---	----------------------------------	------------------

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.	DEPOSIT / CODE →	DIST. OF ORIGIN 203	DISTRICT TO SERVE 5	LOCATION OF SUB-OFFICE OF DIST. TO SERVE
I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK			DATE 11/12/72

- ☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.
- ☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above) James B. Brannan - CP. U. S.	<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above)	FEE (If applicable) \$ 3.00
	MILEAGE \$ 3.36

DATE(S) OF ENDEAVOR (Use Remarks if necessary) 11/17/72	DATE OF SERVICE 11/17/72	TIME AM PM	SIGNATURE OF U. S. MARSHAL OR DEPUTY [Signature]
--	-----------------------------	------------------	---

REMARKS

U.S. MARSHALS SERVICE
INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF DON R. BASEKE, ET AL		COURT NUMBER 74-104-157
DEFENDANT ALBANY & CO. INC., ET AL		TYPE OF WRIT Summons
SERVE	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN ALBANY & CO., INC.	
AT	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 1770 Main Street, New York, NY 10012	

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:		Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. NO. 1 OF 1
Warren W. Winton Cummings & Lockwood One Atlantic Street Stamford, Connecticut 06904		CHECK IF APPLICABLE: <input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.
SPECIAL INSTRUCTIONS:		SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR	TELEPHONE NUMBER	DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE			
Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.	DEPOSIT/CODE	DIST. OF ORIGIN	DISTRICT TO SERVE
I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK		DATE

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)	<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above)	FEE (If applicable) \$ MILEAGE \$
DATE(S) OF ENDEAVOR (Use Remarks if necessary)	DATE OF SERVICE TIME AM PM SIGNATURE OF U. S. MARSHAL OR DEPUTY

REMARKS

U.S. MARSHALS SERVICE INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTION" OR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF DOM P. BASARE, ET AL	COURT NUMBER 74-111-174
DEFENDANT ARMSTRONG & CO., INC., ET AL	TYPE OF WRIT Writ of Habeas Corpus

SERVE ➔	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN DARL SLOVE,
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 1000 South Road, Bridgeport, CT
AT	

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW: Warren W. Eginton Cummings & Lockwood One Atlantic Street Stamford, Connecticut 06904	Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. ➔ NO. 1 TOTAL 1 OF 1 CHECK IF APPLICABLE: <input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included. SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.
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SPECIAL INSTRUCTIONS:

*Marion and Company
61 1/2 ...
New York City*

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR W. J. ...	TELEPHONE NUMBER 203 327-177	DATE 11/17/74
--	--	-------------------------

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE				
Show amount of deposit (or applicable code) and sign USM-28 for first writ only if more than one writ submitted. I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	DEPOSIT/CODE ➔	DIST. OF ORIGIN CT	DISTRICT TO SERVE 2	LOCATION OF SUB-OFFICE OF DIST. TO SERVE
	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK ...			DATE 11/17/74

<input checked="" type="checkbox"/> I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.
<input type="checkbox"/> I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above) ...	<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above)	FEE (If applicable) \$ 3.00 MILEAGE \$.36

DATE(S) OF ENDEAVOR (Use Remarks if necessary)	DATE OF SERVICE 11/17/74	TIME AM	SIGNATURE OF U. S. MARSHAL OR DEPUTY ...
--	------------------------------------	-------------------	--

REMARKS

U.S. MARSHALS SERVICE
INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF RON R. DASENE, ET AL		COURT NUMBER 74 C-155
DEFENDANT ABRAHAM & CO. INC., ET AL		TYPE OF WRIT Condemnation
SERVE	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONCERN JOSEPH A. GOTTLIEB	
→	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 100 Broadway, New York, NY	
AT		

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

**Warren W. Eginton
Cummings & Lockwood
One Atlantic Street
Stanford, Connecticut 06904**

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.

NO. **1** OF **1**

CHECK IF APPLICABLE:

☐ One copy for U. S. Attorney - designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

*During service, try to locate and serve
Abraham & Co. Inc.
100 Broadway, New York, NY*

NAME AND SIGNATURE OF ATTORNEY OF OTHER ORIGINATOR Michael J. ...	TELEPHONE NUMBER 212-527-1700	DATE 11/2/74
---	---	------------------------

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 with writ only if more than one writ submitted.	DEPOSIT/CODE 11	DIST. OF ORIGIN SDNY	DISTRICT TO SERVE SDNY	LOCATION OF SUB-OFFICE OF DIST. TO SERVE
I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK Michael J. ...			DATE 11/12/74

☐ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above) Warren W. Eginton	<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above)	FEE (If applicable) \$ 2.00
	MILEAGE \$.00

REMARKS (Use, if necessary)	DATE OF SERVICE 11/20/74	TIME 11 AM	SIGNATURE OF U. S. MARSHAL OR DEPUTY Michael J. ...
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REMARKS

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

DON R. DASEKE, MARY R. DASEKE AND
MARGARET M. DASEKE D/B/A DASEKE
OPTION ASSOCIATES AND DASEKE
INVESTMENT ASSOCIATES,

Plaintiffs,

-against-

ABRAHAM & CO., INC., MERKIN & CO.,
INC., CARL SLOVE, JOSEPH A. GOTTLIEB
AND JULIUS CHERNY,

Defendants.

CIVIL NO. 4957/74

JUDGE WYATT

NOTICE OF MOTION

S I R :

PLEASE TAKE NOTICE, that the defendants ABRAHAM & CO., INC. and JOSEPH A. GOTTLIEB, will move this Court on a motion part in Room 102 before the Hon. Judge Wyatt at the United States Courthouse, Foley Square, City of New York, on the 28th day of March, 1975 at 2:30 P.M., or as soon thereafter as counsel can be heard, for an order, pursuant to Section 3 of the United States Arbitration Act, 9 U.S.C. §1 et seq., staying further prosecution by the plaintiffs against defendants ABRAHAM & CO., INC., and JOSEPH GOTTLIEB of the complaint herein, pending completion of the arbitration proceedings, involving the identical issues, now pending before the American Arbitration Association, in accordance with the written arbitration agreement with plaintiffs, and for an order, pursuant to Section 4 of the United States Arbitration Act compelling plaintiffs to proceed with said arbitration, and for such other and further relief as to the Court may seem proper and just.

BRAUNER BARON ROSENZWEIG & KLIGLER
Attorneys for defendants Abraham
and Gottlieb
120 Broadway
New York, New York 10005
212/732-5535

Dated: New York
March 12, 1975

TO: Cummings & Lockwood, Esqs.
Attorneys for Plaintiffs
One Atlantic Street
Stamford, Connecticut 06904

Bleakley, Platt, Schmidt & Fritz, Esqs.
Local Counsel to Plaintiffs
120 Broadway
New York, New York 10005

Reavis & McGrath
Attorneys for Defendants Merkin & Co., Slove and Cherny
1 Chase Manhattan Plaza
New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
DON R. DASEKE, MARY R. DASEKE
AND MARGARET M. DASEKE D/B/A
DASEKE OPTION ASSOCIATES AND
DASEKE INVESTMENT ASSOCIATES,

:
:
: CIVIL ACTION NO. 4957/74

Plaintiffs, : JUDGE WYATT

-against- : AFFIDAVIT

ABRAHAM & CO. INC., MERKIN & CO., :
INC., CARL SLOVE, JOSEPH A. GOTTLIEB :
AND JULIUS CHERNY, :

Defendants. :

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

STUART L. SINDELL, being duly sworn, deposes and
says:

1. I am an attorney-at-law and during all times
hereinafter set forth was employed by ABRAHAM & CO. INC.
("ABRAHAM") as a Vice-President and Legal Officer; I am
familiar with all the facts and circumstances hereinafter
set forth; and I make this affidavit in support of the
motion to stay further proceedings against defendants
Abraham and Joseph Gottlieb on the complaint herein,
pending completion of the arbitration proceedings currently
pending before the American Arbitration Association (the
"AAA") in accordance with the written arbitration agreement
between the plaintiffs and ABRAHAM, as more particularly
set forth herein, and to compel plaintiffs to proceed
with said arbitration.

THE PARTIES

2. The plaintiffs are individuals. Don R. Daseke
and Mary Ruth Daseke are the General Partners of Daseke

Option Associates ("DOA"). Don R. Daseke and Margaret M. Daseke are the General Partners of Daseke Investment Associates ("DIA"). DOA and DIA are both general partnerships. Don R. Daseke is the chief officer of Option Account Service, Inc., an investment advisor registered with the Securities and Exchange Commission pursuant to the Federal Investment Advisers Act of 1940. He is also the chief officer of Daseke & Co., Inc., a member organization of the National Association of Securities Dealers, Inc.

3. Defendant ABRAHAM is a Delaware corporation, having its main office at 120 Broadway, New York, New York 10005. Until January 17, 1975, ABRAHAM was a registered broker-dealer under the federal securities laws and a member organization of the New York Stock Exchange.

4. Defendant MERKIN & CO., INC. ("MERKIN") is a New York corporation having its main office at 100 Wall Street, New York, New York. Throughout all times discussed herein MERKIN has been a registered broker-dealer under the federal securities laws and a member organization of the New York Stock Exchange.

5. Throughout all times discussed herein Defendant Joseph A. Gottlieb was Senior Vice-President of Defendant ABRAHAM and a resident of New York.

6. Defendants Carl Slove and Julius Cherny are alleged in the complaint to be employees of MERKIN, the former as a registered representative and the latter as a Vice-President. They are each alleged to reside in the State of New York.

THE SECURITIES ACCOUNTS

7. In June, 1973, plaintiffs opened a securities account, more specifically an option writing account operated on margin, denominated the DOA Account, with defendant ABRAHAM. Subsequently plaintiffs opened the DIA account, another option writing account, operated on margin. These accounts were introduced to ABRAHAM by plaintiffs' broker, MERKIN, on a fully disclosed basis. Pursuant to the arrangement, plaintiffs' orders were placed with and executed by MERKIN (the introducing broker), which then relayed them to ABRAHAM (as carrying broker) for processing and reconciliation.

8. Upon opening the accounts, plaintiffs executed certain margin and option account agreements with ABRAHAM setting forth the usual terms governing the extension of credit by brokers, and providing for the settlement by arbitration of any controversy between the plaintiffs and ABRAHAM. A copy of the margin agreement executed by DOA and DIA is annexed hereto and marked as Exhibit A.

9. In May and June of 1974 a dispute arose with respect to the margining of the DOA and DIA accounts. After having made a demand of plaintiffs for additional margin, which margin plaintiffs failed to furnish, ABRAHAM on June 20th, 1974, demanded payment of its margin loans, which as of that date were in the aggregate amount of \$276,266.97, plus accrued interest, and which loans were payable on demand pursuant to the terms of the margin agreement between plaintiffs and ABRAHAM. In the alternative, ABRAHAM stated that it would accept the deposit of \$241,358. as additional margin to properly

margin the accounts. Plaintiffs did not respond to the demand for payment.

THE AGREEMENT TO ARBITRATE

10. Subsequently, on June 26, 1974, plaintiffs notified ABRAHAM of their election to submit their dispute with ABRAHAM, as to the margining of the accounts, to arbitration in accordance with the rules of the AAA. A copy of said letter, addressed to the AAA with a copy to ABRAHAM, is annexed hereto as Exhibit B. It states as follows:

American Arbitration Association

Gentlemen:

The purpose of this letter is to advise you of the election of Daseke Option Associates and Daseke Investment Associates to submit their disputes with Abraham & Co., Inc. and Merkin & Co., Inc. to arbitration in accordance with the rules of the American Arbitration Association. These disputes arise under and in connection with margin account agreements between the parties providing that controversies are to be settled by arbitration. A copy of the form of such margin agreements is enclosed.

Very Truly Yours,

Daseke Option Associates
Daseke Investment Associates

By _____
Don R. Daseke

11. On July 1, 1974, having received plaintiffs' statement of their election to arbitrate the dispute before the AAA, the undersigned on behalf of ABRAHAM initiated an arbitration proceeding in that forum naming the partners of DOA as respondents ("Arbitration No. 1"). The Demand for Arbitration and Statement of Claim submitted to the AAA by ABRAHAM are annexed hereto as

Exhibits C and D, respectively. ABRAHAM'S claim was for repayment of the margin loan plus accrued interest. The AAA commenced administration of said proceeding and assigned to it Case No. 1310 0693 74.

12. Thereafter, on or about July 12, 1974, the partners of DOA, by their attorneys, Cummings & Lockwood, filed an Answer to ABRAHAM's Statement of Claim in Arbitration No. 1. A copy of said Answer is annexed hereto as Exhibit E.

13. At the same time, i.e. July 12, 1974, all of the plaintiffs, by their attorneys, Cummings & Lockwood, initiated a second arbitration proceeding (Arbitration No. 2) naming ABRAHAM and MERKIN as parties respondent. A copy of plaintiffs' attorneys' letter to the AAA dated July 12, 1974, initiating Arbitration No. 2 is annexed hereto as Exhibit F. A copy of the Demand for Arbitration and of the plaintiffs' Statement of Claim, which accompanied said letter, are annexed hereto as Exhibits G and H, respectively.

14. Plaintiffs' letter of July 12, 1974 initiating Arbitration No. 2 recited as its basis the margin agreement between plaintiffs and ABRAHAM and the plaintiffs' earlier letter of June 26, 1974, copies of which were attached to the letter.

15. Plaintiffs' Statement of Claim in Arbitration No. 2 alleged certain misconduct in the handling of the margin aspects of the DOA and DIA accounts and asserted that said misconduct constituted violation of applicable provisions of, and regulations under, the Securities Exchange Act of 1934 ("The Exchange Act") and the regulations promulgated thereunder, Regulation T of the Board of

Governors of the Federal Reserve System and the margin rules and regulations of the New York Stock Exchange. Essentially, plaintiffs' claim was that the accounts were undermargined for some time prior to ABRAHAM's demand for additional margin.

16. While initiating Arbitration No. 2 against defendant ABRAHAM, plaintiffs continued willingly to participate in all respects in the administration of Arbitration No. 1. Plaintiffs, inter alia, submitted to the AAA a list indicating their preferences as to the arbitrators proposed by the AAA, returned a date calendar indicating the hearing dates acceptable to them, and submitted their estimation as to the length of hearing that would be required. In addition, the plaintiffs, in their letter of July 12, 1974 by which Arbitration No. 2 was initiated, suggested that inasmuch as Arbitration Nos. 1 and 2 arose out of the handling of the same accounts, the two proceedings should be consolidated.

17. Thereafter, on July 19, 1974, defendant ABRAHAM submitted to the AAA and to plaintiffs their Answer in Arbitration No. 2, a copy of which is annexed hereto as Exhibit I.

18. The AAA continued to administer Arbitration Nos. 1 and 2 jointly and under one case number. On August 16, 1974, the AAA announced the appointment of one arbitrator from the first list of proposed arbitrators submitted to plaintiffs and to ABRAHAM. Annexed hereto and marked as Exhibit J, is a copy of the letter, dated August 16, 1974, directed by the AAA to the parties, showing the caption of the arbitration as administered by the AAA and announcing the arbitrator appointment. Simultaneously the AAA submitted a second list of proposed arbitrators to the parties.

19. Thereafter, in September 1974 a dispute arose as to whether MERKIN was subject to arbitration before the AAA. MERKIN initiated a New York State Court proceeding to stay the arbitration of plaintiffs' claims against MERKIN in Arbitration No. 2. On being advised of the MERKIN motion, the AAA stayed administration of Arbitration No. 2, and inquired of the parties, by letter dated September 4, 1974, annexed hereto as Exhibit K, whether they wished to proceed with Arbitration No. 1 or wait for the disposition of the MERKIN motion. By agreement of both parties Arbitration No. 1 was stayed. The letter, dated September 9, 1975, directed by plaintiffs' attorney to the AAA agreeing to the Stay of Arbitration No. 1 is annexed hereto as Exhibit L.

20. Subsequently, while the MERKIN application for a stay was still pending, plaintiffs experienced a change in heart. Before the Court rendered any decision on MERKIN's application for a stay of arbitration, plaintiffs consented to MERKIN's application and released it from arbitration.

21. Then, on November 12, 1974, plaintiffs initiated this action, and on November 19, 1974 they advised the AAA that they had initiated the action, and purported to withdraw from the arbitration, as set forth in the letter of plaintiffs' attorneys annexed hereto and marked as Exhibit M.

22. Promptly, on receipt of plaintiffs' letter, ABRAHAM advised the AAA of its opposition to the withdrawal of this dispute from arbitration, as set forth in its letter, dated November 22, 1974 annexed hereto as Exhibit N.

THE COMPLAINT

23. The acts of misconduct alleged in the complaint herein with respect to the handling of the DOA and DIA accounts are identical to those previously alleged by plaintiffs in their Statement of Claim in Arbitration No. 2. The complaint contains six counts, in which plaintiffs charge that such acts constitute violations of Regulation T promulgated by the Board of Governors of the Federal Reserve System pursuant to Section 7 of the Exchange Act (Count 1); violations of New York Stock Exchange Rule 431, and Sections 6 and 19 of the Exchange Act (Count 2); violations of unspecified sections of the Exchange Act having the alleged effect, pursuant to Section 29 of the Exchange Act, of voiding the customer agreement between defendants and plaintiffs (Count 3); violations of Section 10(b) of the Exchange Act and the rules promulgated thereunder (Count 4); negligent and reckless conduct (Count 5); and violations of defendants' contractual duties to and fiduciary relationship with plaintiffs, and fraudulent conduct actionable under the laws of the State of New York (Count 6). A copy of the complaint herein is annexed as Exhibit O.

STAY PENDING ARBITRATION

24. As can be seen from the foregoing, after their dispute with ABRAHAM had fully developed, plaintiffs who are sophisticated and knowledgeable investors, freely, knowingly, with full appreciation of the scope of the issues raised, and with the benefit of the advice of legal counsel, agreed to arbitrate this controversy with

ABRAHAM before the AAA. This agreement to arbitrate is in writing, embodied in plaintiffs' letter of June 26, 1974, quoted in full in paragraph 10 above, and annexed hereto as Exhibit B. It is further embodied in the Demand for Arbitration and Statement of Claim in Arbitration No. 2, and the attorneys letter transmitting them (Exhibits G, H and F) by which plaintiffs actually submitted the matter to arbitration.

25. Having agreed to arbitrate an existing dispute, and having actually submitted the dispute to arbitration, plaintiffs continued freely, knowingly and with the benefit of legal counsel to participate in the administration of the arbitration proceeding for a period of five months. During the same period, they received ABRAHAM'S Demand for Arbitration and Statement of Claim and plaintiffs, again, freely, knowingly and with the benefit of legal counsel, filed an Answer and participated in all other respects in the arbitration procedure.

26. We are advised by counsel and do believe that an agreement to arbitrate an existing dispute of this type between a broker and its customer is enforceable. Furthermore, to allow a party in a situation of this type to begin forum shopping after it has already submitted a dispute to arbitration would cause a great disruption to the dispute resolution procedures of the AAA and the New York Stock Exchange which annually resolve great numbers of disputes between customers and brokers. The issues previously raised by the plaintiffs in arbitration are identical to those they

now seek to bring before this court. They should not be allowed to engage in such forum shopping.

27. By engaging in this tactic, plaintiffs have caused great delay in the resolution of this dispute. Plaintiffs' action is a defensive one. At the genesis of this dispute, when the DOA and DIA accounts fall below the New York Stock Exchange margin requirements, ABPAHAM sought a further margin payment from plaintiffs, to which plaintiffs responded by urging ABRAHAM to continue carrying the accounts in their undermargined condition. Then, when ABRAHAM demanded payment of the margin loan, plaintiffs stated that they wanted to arbitrate the matter. Now that the controversy has been submitted to arbitration, plaintiffs seek to cavalierly cast aside the months of arbitration procedure and start all over again, despite the fact that arbitration was begun originally in July, 1974 at their election, in their chosen forum. It thus appears that plaintiffs' motive throughout has been to delay the day of reckoning on which they will have to repay their margin loans. ABRAHAM has been greatly prejudiced by plaintiffs' breach of their agreement to arbitrate this matter, and for that reason feels it just that this action be stayed and that plaintiffs' be compelled to return to arbitration in accordance with the arbitration agreement.

28. Plaintiffs' complaint herein contains no allegations specifically alleging wrongdoing by Joseph Gottlieb. There is no theory that would attribute liability to Gottlieb while absolving ABRAHAM, on whose behalf he acted. The arbitration of this matter between

plaintiffs and ABRAHAM will, practically speaking, resolve all issues as to Mr. Gottlieb. If ABRAHAM is absolved of liability to plaintiffs, in the arbitration award, then the claims against Mr. Gottlieb will also be repudiated. If ABRAHAM is found liable to plaintiffs, then it will clearly be able to meet its obligations, and plaintiffs, who will still have the right to proceed if they wish against Mr. Gottlieb, will suffer no prejudice.

WHEREFORE, defendants ABRAHAM and Gottlieb respectfully request that the relief prayed for in their notice of motion be granted.

14
Stuart L. Sindell

Sworn to before me this

12 day of March, 1975.

Notary Public

NOTARY PUBLIC
STATE OF CALIFORNIA
My Comm. Expires March 30, 1976

72-207433-408

ABRAHAM & CO. INC.
120 BROADWAY
NEW YORK, N. Y. 10005

Dear Sirs:

1. In consideration of your continuing, opening or reopening after the date hereof an account or accounts for the undersigned, I agree that (a) only actual purchases and sales and actual deliveries are contemplated and intended; (b) any account heretofore and/or hereafter opened by me in any capacity and any transaction therein shall be subject to the regulations, customs and usages of the New York Stock Exchange and/or any other Exchange or Market in which any transaction or any part thereof is handled; (c) you may employ other brokers, agents and/or correspondents in the handling of said accounts and you shall have no liability for their acts except for care in selection; and (d) any and all securities or other property in any of said accounts are to be held by you as security for any liability in any other such account, with the right to transfer moneys, securities or other property from any of said accounts to another, and all such securities and property may from time to time without notice be pledged and repledged either separately or with other securities or property for any amount whatever.

2. You may at any time upon demand require me to discharge all my debts and obligations to you. You are authorized in your discretion, should you deem it necessary for your protection, to sell any or all of my property which you may be carrying for me, or in any account guaranteed by me, or to buy any property of which any of my accounts may be short, or to cancel any outstanding orders in order to close out the account or accounts in whole or in part. Any such sales or purchases may be made on either an exchange or other market or at public or private sales, all without prior demand for additional margin or security, and without tender or advertisement or notice, all of which are hereby expressly waived. Your right to sell or purchase without notice or demand at any time shall not be limited or affected by any demand, notice, or statement specifying a different time, later or earlier than the time at which such sale or purchase is made, and I waive all rights and claims based on any such differences in time. At any such sale, except a private sale, you may become the purchaser. I agree to pay any and all costs and expenses of any such sales or purchases and any deficiencies.

3. I authorize you to charge any of said accounts monthly with interest at such rates as you deem fair and proper and also with reasonable charges for the use of your services and facilities.

4. In the event of my death or mental incapacity, all of my undertakings, obligations and liabilities herein shall be binding upon my heirs and legal representatives, and all outstanding orders executed prior to the receipt by you of actual notice of my death or mental incapacity shall be similarly binding upon my said legal representatives and heirs. All the undertakings, obligations and provisions herein shall inure to the benefit of your firm or any successor firm, whether or not such successor firm is created by reconstitution of the partners or by consolidation or merger with any other person or firm.

DISC
OPINION
HSS

Exhibit A

5. All confirmations, statements and any other notice or communication shall be deemed to have been duly personally served upon me if conveyed to me orally by telephone in person or sent to me by mail, telegraph, messenger, addressed to me at the address set forth below or such changed address as I may hereafter designate in writing.

6. No waiver or modification of this agreement shall be effective unless the same is in writing and signed by a general partner of your firm. This agreement, its construction and enforcement shall be governed by the laws of the State of New York and shall continue in force and effect so long as any such account is being maintained and has not been completely liquidated.

7. Any controversy between us shall be settled by arbitration in accordance with the laws of the State of New York then applicable, and by and in accordance with the rules of the Arbitration Committee of the Chamber of Commerce of the State of New York, or the American Arbitration Association, or the Board of Arbitration of the New York Stock Exchange, as I may elect within five days after notice is given me requesting such election, and upon my failure to make such election within five days after such notice is given, then you may make such election. I hereby submit myself to the jurisdiction of the State of New York, County of New York, and waive personal service of any notice that may be required to initiate and complete such arbitration.

8. I hereby represent that I am of full age and sound mind, and that I am not an employee of any Exchange nor of any Member or member firm thereof, nor of any corporation controlled by any Exchange or of any bank, trust company, insurance company, nor of any corporation, firm or individual engaged in the business of dealing either as broker or principal in securities, commodities, bills of exchange, acceptances or other forms of commercial paper, nor as any other person interested in my account or accounts with you directly or indirectly, except as I have specifically indicated in such accounts.

9. Whenever reference in this agreement is made to me, it shall include me in my capacity as an individual, fiduciary, agent or otherwise.

Date 11-1-73

Don R. Drake

x May Ruth Drake
(Signature)

6 Corporate Park Dr.
White Plains, N.Y. 10607
(Address)

72-207433

LENDING AGREEMENT

Until receipt of contrary notice in writing from me, you are hereby authorized to lend either separately or with other securities to either yourselves as brokers, or to others any securities or other property held by you in any account maintained by me in any capacity.

11-1-73
(Date)

Don R. Drake
x May Ruth Drake
(Signature)

Room 101
6 Corporate Park Drive
White Plains, New York 10604
June 26, 1974

American Arbitration Association
140 W. 51st Street
New York, New York

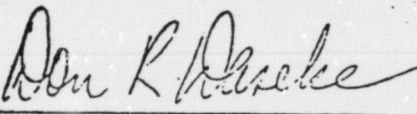
Gentlemen:

Re: Daseke Option Associates
Daseke Investment Associates

The purpose of this letter is to advise you of the election of Daseke Option Associates and Daseke Investment Associates to submit their disputes with Abraham & Co., Inc. and Merkin & Co., Inc. to arbitration in accordance with the rules of the American Arbitration Association. These disputes arise under and in connection with margin account agreements between the parties providing that controversies are to be settled by arbitration. A copy of the form of such margin agreements is enclosed.

Very Truly Yours,

Daseke Option Associates
Daseke Investment Associates

By 
Don R. Daseke

DRD:cst

cc: Mr. Stuart L. Sindell
Vice President/Legal Department
Abraham & Co., Inc.
120 Broadway
New York, New York 10005

COMMERCIAL ARBITRATION RULES

DEMAND FOR ARBITRATION

DATE: July 1, 1974

DON R. DASEKE AND MARY RUTH DASEKE d/b/a
TO: (Name) -- DASEKE OPTIONS ASSOCIATES
(of party upon whom the Demand is made)
(Address) -- 6 Corporate Park Drive
(City and State) -- White Plains, N.Y. 10604

Named claimant, a party to an arbitration agreement contained in a written contract,
dated 11/1/73, providing for arbitration, hereby
demands arbitration thereunder.
(attach arbitration clause or quote hereunder)

NATURE OF DISPUTE: See Statement of Claim attached.

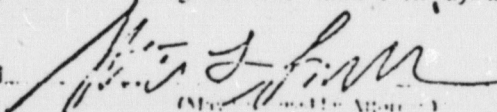
CLAIM OR RELIEF SOUGHT: (amount, if any)

PLEASE TAKE FURTHER NOTICE, that unless within twenty
Intention to Arbitrate, you apply to stay the arbitration herein, you shall thereafter be precluded from
objecting that a valid agreement was not made or has not been complied with and from asserting in court
the bar of a limitation of time.

HEARING LOCALE REQUESTED: New York, New York
(City and State)

You are hereby notified that copies of our arbitration agreement and of this demand are being
filed with the American Arbitration Association at its New York
Regional Office, with the request that it commence the administration of the arbitration. Under Section 7
of the Commercial Arbitration Rules, you may file an answering statement within seven days after notice
from the Administrator.

Signed



Stuart L. Sindell, Vice President/Gen. Counsel

Name of Claimant -- Abraham & Co., Inc. --

Address (to be used in connection with this case) 120 Broadway

New York, N.Y. 10005

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between :

ABRAHAM & CO. INC. :

Claimant :

-and- :

DON R. DASEKE AND MARY RUTH DASEKE d/b/a :

DASEKE OPTION ASSOCIATES :

Respondents :

STATEMENT OF CLAIM

Claimant, Abraham & Co. Inc. ("Abraham"),
situated at 120 Broadway, New York, N.Y., for its complaint
against the respondents says:

1. Abraham is a member organization of the
New York Stock Exchange and, through
introduction on a fully-disclosed basis
by the member organization of Merkin & Co.
Inc., carries the securities account of
the respondents, entitled Daseke Option
Associates ("DOA").
2. DOA is a general investment partnership
whose principal place of business is
6 Corporate Park Drive, White Plains, New York.

Exhibit A

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3. Don R. Daseke and Mary Ruth Daseke are the sole general partners of DOA.
4. Don R. Daseke, in his own right, is the chief officer of Option Account Service, Inc., a registered investment advisor, and of Daseke & Co., Inc., a member organization of the National Association of Securities Dealers, Inc.
5. The DOA account is a trading account, operated on margin, employing professional option hedging strategies.
6. Upon opening the account, respondents executed appropriate margin and option account agreements setting forth the usual requirements governing the extension of credit by brokers and providing for the submission to arbitration before the American Arbitration Association of any dispute between Abraham and the respondents.
7. On May 20, 1974, after a sharp decline in the market, Abraham determined that respondents' account was insufficiently margined, based

on the following valuations:

Market Value \$1,023,834

Debit Balance 829,551

Equity \$ 94,283

Accordingly, on the same day, Abraham notified respondents by telegram of the condition of the account and demanded \$300,000 additional margin to properly margin the account.

8. When respondents failed to furnish the additional funds requested within the 2 days allotted for meeting the call , and indicated their inability to do so within even a reasonable time thereafter, Abraham, in the proper exercise of its rights and duties as a creditor, proceeded to take corrective action by executing liquidating and covering transactions in the account.
9. Because of the peculiar and complex make-up of the account, in particular the existence of numerous short option positions with expiration dates far into the future, Abraham

could do little else but scale down the account in an effort to reduce exposure to further loss and as a means of mitigating potential damages. (Unlike the usual sellout procedure applicable to margin-deficient accounts, it was not possible for Abraham to close out the account or, for that matter, liquidate sufficient positions to improve the margin condition of the account to an acceptable margin maintenance level, without rendering the account even more vulnerable to potential loss.)

10. On June 20, 1974, Abraham called respondents' margin loan amounting (as of that date) to \$274,108 (plus accrued interest), which loan, by its very nature, is callable on demand. In the alternative, Abraham offered to accept funds in the sum of \$218,710 to properly margin the account.
11. Respondents failed to respond to either request for payment.

12. As of the filing of this claim, the condition of the DOA account was as follows:

Market Value	\$247,272
Debit	241,659
Equity	7,613

WHEREFORE Abraham seeks redress from respondents in the form of a determination by the arbitrators that:

- 1) Respondents are required to satisfy in full their margin loan, represented by the current debit balance in respondents' account, which, as of the date of the filing of this action, amounts to \$241,659 (plus accrued interest), and to bear the costs and expenses of this proceeding. (Since the margin loan figures are subject to change on a daily basis, they will be updated and again be presented to the arbitrators on the opening day of the hearing.); and
- 2) Any award rendered in favor of Abraham in this proceeding will not serve to estop

Abraham from initiating a separate action (or actions) against respondents to obtain recovery of new margin debts arising in the future. (As respondents' account basically consists of partially hedged short option positions, the last of which expires in September 1975, the potential for loss (and, thus, the creation of new debts) is a continuing one, despite the satisfaction of any present margin debt.)

DATED: New York, New York

July 1, 1974

ABRAHAM & CO. INC.

BY: _____
Stuart L. Sindell
Vice President/General Counsel

AMERICAN ARBITRATION ASSOCIATION
REGION OF NEW YORK

In the Matter of Arbitration Between

ABRAHAM & CO., INC.

Claimant,

-and-

DON R. DASEKE and MARY RUTH
DASEKE, d/b/a DASEKE OPTION
ASSOCIATES

Respondents.

NO. 1310 0693 74

ANSWER OF RESPONDENTS

Respondents, DON R. DASEKE and MARY RUTH DASEKE,
d/b/a DASEKE OPTION ASSOCIATES, for their answer to the
complaint of Abraham & Co., Inc., say:

1-4. Paragraphs 1 through 4 of the Statement of
Claim are admitted.

5. Paragraph 5 of the Statement of Claim is denied,
except that respondents admit that the DOA account is a trading
account operated on margin.

6. Paragraph 6 of the Statement of Claim is admitted.

7. With respect to paragraph 7 of the Statement
of Claim, the respondents have no knowledge or information
sufficient to form a belief, and accordingly leave the claimant
to its proof, except that respondents admit that on May 20,
1974 the claimant demanded \$300,000 additional margin.

Exhibit E

44

8. Paragraph 8 of the Statement of Claim is denied, except that respondents admit that the claimant, since May 20, 1974 has been liquidating the account, to the detriment of the respondents.

9. Paragraph 9 of the Statement of Claim is denied.

10. Paragraph 10 of the Statement of Claim is denied, except that respondents admit that on June 20, 1974 the claimant called respondents' margin loan or in the alternative, demanded additional margin in the amount of \$218,710.

11. Paragraph 11 of the Statement of Claim is denied.

12. With respect to paragraph 12 of the Statement of Claim, the respondents have no knowledge or information sufficient to form a belief, and accordingly leave the claimant to its proof.

THE RESPONDENTS, DON R. DASEKE
and MARY RUTH DASEKE, c/b/a DASEKE
OPTION ASSOCIATES,
BY CUMMINGS & LOCKWOOD
THEIR ATTORNEYS

By 

Warren W. Eginton
P. O. Box 120
Stamford, Connecticut 06904

Dated: Stamford, Connecticut
July 12, 1974

July 12, 1974

Miss Ellen Maltz
Tribunal Administrator
American Arbitration Association
140 West 51st Street
New York, New York 10020

Re: Don R. Daseke, Mary R. Daseke & Margaret
M. Daseke; also d/b/a Daseke Investment
Associates & Daseke Option Associates v.
Abraham & Co., Inc. and Merkin & Co., Inc.

Dear Miss Maltz:

Enclosed herewith please find a specific demand for arbitration filed in behalf of my clients, Don R. Daseke, Mary R. Daseke & Margaret M. Daseke; also d/b/a Daseke Investment Associates & Daseke Option Associates against Abraham & Co., Inc. and Merkin & Co., Inc., pursuant to the original claim letter filed with you under date of June 26, 1974.

The transactions which give rise to this demand for arbitration arise out of the trading accounts, one of which has been made the subject of your arbitration No. 1310 0693 74, which was initiated on July 3, 1974.

In that matter, which in my judgment should be joined for hearing with the instant claim, I am enclosing herewith an itemized response to the Abraham & Co. Statement of Claim.

In that action, I am also returning the date calendar as our estimation as to the length of the hearing, together with the arbitration list, with order of preference designated.

46.

Exhibit A F

Miss Ellen Maltz

-2-

July 12, 1974

These same documents would apply to the arbitration demand that my client submitted on June 26, 1974, as made more specific herein.

I am enclosing a check to your order in the amount of \$200, in view of the indeterminate nature of the claim.

Very truly yours,

Warren W. Eginton

WWE:cm
Enclosures

47.

F1

Room 101
6 Corporate Park Drive
White Plains, New York 10604
June 26, 1974

American Arbitration Association
140 W. 51st Street
New York, New York

Gentlemen:

Re: Daseke Option Associates
Daseke Investment Associates

The purpose of this letter is to advise you of the election of Daseke Option Associates and Daseke Investment Associates to submit their disputes with Abraham & Co., Inc. and Merkin & Co., Inc. to arbitration in accordance with the rules of the American Arbitration Association. These disputes arise under and in connection with margin account agreements between the parties providing that controversies are to be settled by arbitration. A copy of the form of such margin agreements is enclosed.

Very Truly Yours,

Daseke Option Associates
Daseke Investment Associates

By Don R. Daseke
Don R. Daseke

DRD:cst

cc: Mr. Stuart L. Sindell
Vice President/Legal Department
Abraham & Co., Inc.
120 Broadway
New York, New York 10005

F. 3

COMMERCIAL ARBITRATION RULES DEMAND FOR ARBITRATION

DATE: July 12, 1974

TO: (Name) Abraham & Co., Inc. Merkin & Co., Inc.

(of party upon whom the Demand is made)

(Address) 120 Broadway 100 Wall Street(City and State) New York, N.Y. 10005 New York, N.Y. 10005

parties
Named claimants ~~xxxxxx~~ an arbitration agreement contained in ~~x~~ written contracts

dated 6/73, 7/73 and 11/73, providing for arbitration, hereby
demand ~~x~~ arbitration thereunder.

(attach arbitration clause or quote hereunder)

(see attached)

NATURE OF DISPUTE: In accordance with the attached letter dated June 26, 1974, which instituted this arbitration action, the claimants seek relief against the respondents, as more particularly described in the annexed Statement of Claim.

CLAIM OR RELIEF SOUGHT: (amount, if any)

Amount indeterminate - see attached Statement of Claim

PLEASE TAKE FURTHER NOTICE, that unless within ten days after service of this Notice of Intention to Arbitrate, you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

HEARING LOCALE REQUESTED: New York, New York

(City and State)

You are hereby notified that copies of our arbitration agreement and of this demand are being filed with the American Arbitration Association at its New York Regional Office, with the request that it commence the administration of the arbitration. Under Section 7 of the Commercial Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

Signed Warren W. Eginton(May be Signed by Attorney Warren W. Eginton)

Name of Claimants

Don R. Daseke, Mary R. Daseke &
Margaret M. Daseke; also d/b/a
Daseke Investment Associates, Inc.
Daseke Option Associates
Warren W. Eginton

Address (to be used in connection with this case)

City and State

Cummins & Lockwood
P. O. Box 120
Stamford, Connecticut 06904
Telephone 203-527-1700

50.

AMERICAN ARBITRATION ASSOCIATION
REGION OF NEW YORK

In the Matter of Arbitration Between

DON R. DASEKE, MARY R. DASEKE &
MARGARET M. DASEKE also d/b/a
DASEKE OPTION ASSOCIATES and DASEKE
INVESTMENT ASSOCIATES

Claimants

-and-

ABRAHAM & CO., INC. and MERKIN &
CO., INC.

Respondents

STATEMENT OF CLAIM

- Claimants Don R. Daseke, Mary R. Daseke & Margaret M. Daseke also d/b/a Daseke Option Associates and Daseke Investment Associates, situated at 6 Corporate Park Drive, White Plains, New York, for their complaint against the respondents say:

1. Abraham & Co., Inc. ("Abraham") is a member organization of the New York Stock Exchange and, through introduction on a fully-disclosed basis by the member organization of Merkin & Co., Inc., carries the securities accounts of the claimants entitled Mary R. and Don R. Daseke, Daseke Option Associates ("DOA"), Daseke Investment Associates ("DIA"). The foregoing accounts are hereinafter collectively referred to as the "Accounts".

2. The account of Don R. and Mary Ruth Daseke was opened with Abraham in June 1973. In November 1973 the name of the account was changed to DOA, a partnership whose sole general partners are Don R. Daseke and Mary Ruth Daseke. The principal place of business of Don R. Daseke, Mary Ruth Daseke

and DOA is 6 Corporate Park Drive, White Plains, New York 10604.

3. DIA is a general investment partnership whose sole general partners are Don R. Daseke and Margaret M. Daseke. The principal place of business of DIA is 6 Corporate Park Drive, White Plains, New York 10604.

4. The Accounts are margined option writing accounts. The Accounts purchase and sell securities on margin and write "put" and options on various securities.

5. In connection with transactions in the Accounts, respondents were required to comply with applicable federal law and regulations as well as the margin rules and regulations of the Federal Reserve Board, the New York Stock Exchange and so-called house margin rules of respondents. In particular, the respondents were required to adhere to Section 7 of the Securities Exchange Act of 1934 (the "1934 Act") and the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, more specifically Regulation T, 12 C.F.R. §220 ("Reg. T").

6. Upon opening the Accounts, claimants executed certain margin and option agreements required by respondents. These agreements provided, inter alia, that the Accounts would be subject to all applicable rules, regulations, customs and usages of the New York Stock Exchange and the Chicago Board of Options.

7. During the period September 1973 to April 1974, respondents solicited and/or executed numerous orders to purchase securities for the Accounts, each of which was in violation of the aforementioned laws, rules, regulations, customs and usages. These orders had an aggregate value of approximately \$474,000.

8. Respondents failed to notify the claimants that the aforementioned purchases were in violation of Section 7 of the 1934 Act and Reg. T. Consequently, such purchases are void and voidable under Section 29 of the 1934 Act.

9. Respondents were required to constantly monitor the margin position of the Accounts in order to assure compliance with Reg. T and other applicable rules and regulations.

Respondents had a professional margin department, a substantial number of clerical personnel and data processing facilities available to compute the margin position of the Accounts. Notwithstanding their duty and the extensive facilities available, respondents reported the margin position of the DOA account to claimants only 5 times in an eight month period. And, even on those occasions, it appears that respondents erroneously computed the margin status of the Accounts, as more particularly set forth in paragraphs 10 through 13 hereof. As a consequence of respondents' erroneous calculations and breach of their duty to claimants, claimants were not properly informed as to the margin status of the Accounts and the fact that the Accounts were in violation of Reg. T.

10. In addition to the generally erroneous calculations referred to in paragraph 9 hereof, the specifics of which are not known to claimants, respondents failed to compute the claimants' short accounts at the market value of their short positions ("mark to the market") as required by Reg. T. As a result, claimants' margin indebtedness was consistently understated.

11. Respondents failed to obtain "substantial additional margin" on options maturing more than 6 months and 10 days from

the date of issuance and on securities that may be difficult to liquidate promptly in violation of Rule 431(d)(1 and 2) of the New York Stock Exchange.

12. Respondents failed to recompute the margin status of the Accounts as transactions in the Accounts exposed existing option contracts as unhedged or "naked" options and failed to secure additional margin required as a result thereof.

13. Respondents permitted claimants to withdraw \$10,000 and \$2,500 from the Accounts on September 6, 1973 and October 12, 1973, respectively, thereby impliedly representing that the Accounts were in margin compliance and inducing claimants to continue their option writing activities. In fact, the Accounts were in margin violation and there may have been a deficit in the Accounts' equity position at the time of the October withdrawal. Respondents similarly misled claimants as to the margin status of the DOA account by permitting claimants to withdraw \$6,000 from the DOA account on May 2, 1974.

14. Notwithstanding that the Accounts were in violation of Reg. T and other applicable rules and regulations since at least September of 1973, respondents failed to notify claimants and failed to expeditiously implement the remedial action mandated by Reg. T and by such other applicable rules and regulations. Had such remedial action been promptly implemented, claimants would have secured more favorable prices for securities disposed of to reduce margin indebtedness and their equity in the Accounts would have been protected. Respondents' failure to comply with Reg. T caused claimants additional damages by reason of increased interest expense charged to the Accounts.

15. Subsequent to September of 1973 and prior to May of 1974, respondents failed to take action to bring the Accounts into margin compliance as required by Reg. T while permitting

claimants to continue activity in the Accounts. Claimants explained their activities with respect to the Accounts to respondents and respondents acquiesced. In May of 1974, after 8 months of inaction with respect to the Accounts under-margined status, during which period claimants' activities had substantially improved the status of the Accounts, respondents unilaterally and precipitously implemented a course of action with respect to the Accounts purportedly to bring the Accounts into margin compliance. This course of action in fact worsened the margin status of the Accounts, substantially eroded claimants' equity and was in violation of applicable custom and usage.

16. The course of action referred to in paragraph 15 was implemented by respondents for their benefit, in total disregard of their duties to the claimants and in such a way as to maximize commissions and interest paid by the Accounts. There were alternative courses of action available to respondents which would have achieved a comparable reduction of margin indebtedness in the Accounts while preserving claimants' equity position.

17. Respondents prohibited claimants from utilizing the services of non-member brokerage firms ("third-market" brokers) to execute certain transactions for the Accounts. The services of such brokers would have substantially reduced the commission dollars paid by claimants to respondents.

18. Respondents failed to execute transactions in the Accounts in such a fashion as to minimize the commission expense to the claimants.

19. Without the approval or authorization of claimants, respondents debited the Accounts in the amount of approximately \$94,000 to purchase call options on Common Stock

of American Motors Corp., Braniff Airways and Loews, Inc. to cover outstanding options written by the Accounts. These actions were taken contemporaneously with respondents' sales of various securities of these issuers from the Accounts which were covering such outstanding options. The aforementioned debits, which increased the Accounts' margin indebtedness, would not have been required had respondents not sold such various securities. Respondents stated these actions were necessary to bring the Accounts into margin compliance. In fact, these unauthorized and illogical actions resulted in reducing both the dollars and the percentage of equity in the Accounts.

20. Respondents liquidated the Accounts in such a manner as to cause claimants significant additional risk and possible future damages from outstanding option contracts which were negligently and willfully left exposed to future market fluctuations.

21. As a result of the foregoing, claimants were also damaged by reason of additional interest charges attributable to unnecessarily created margin indebtedness.

22. With a diligent and patient effort, claimants accumulated almost 10% of the outstanding warrants of Braniff Airways, a security listed on the American Stock Exchange, thereby becoming one of the largest holders of this issue. Because of the short supply available for trading, it was necessary to make these purchases over a two year period. Without authorization respondents sold practically the entire position in less than a 30 day period. This action by respondents failed to secure the most advantageous prices and caused claimants the loss of their position which cannot be replaced without substantial expense.

Wherefore claimants seek redress from respondents in the form of a determination by the arbitrators that:

1. Respondents are responsible for the costs and losses caused claimants as a direct result of respondents' inactions and actions more particularly described above. These costs and losses are indeterminate because they are subject to change on a daily basis. Claimants currently estimate these costs and losses to be in excess of \$400,000.

2. Respondents are required to restore claimants' valuable position in Branch warrants. In the alternative, respondents are required to compensate claimants for the loss of their valuable position.

3. Claimants are entitled to such other and additional legal and equitable relief as the arbitrators may see fit to impose upon respondents, together with the costs and expenses of the arbitration.

Dated at Stamford, Connecticut this 16th day of July, 1974.

THE CLAIMANTS, DON R. DASEKE and
MARY R. DASEKE also d/b/a
DASEKE OPTION ASSOCIATES and
DASEKE INVESTMENT ASSOCIATES

By (s) (s) R. W. Eginton
Warren W. Eginton

By Howard A. Knight
Howard A. Knight

Cummings & Lockwood
P. O. Box 120
One Atlantic Street
Stamford, Connecticut 06904
203-327-1700

ATTORNEYS FOR THE
CLAIMANTS

AMERICAN ARBITRATION ASSOCIATION
REGION OF NEW YORK

In the Matter of Arbitration Between

DON R. DASKE, MARY R. DASEKE &
MARGARET M. DASEKE also d/b/a
DASEKE OPTION ASSOCIATES AND DASEKE
INVESTMENT ASSOCIATES.

Claimants

-and-

ABRAHAM & CO. INC. AND MERKIN &
CO., INC.

Respondents

ANSWER
OF
RESPONDENT

- Respondent, Abraham & Co. Inc., for its
Answer to the complaint of claimants herein, says:
- 1-6. Paragraphs 1 through 6 of the Statement of
Claims are admitted.
 - 7-8. Paragraphs 7 and 8 of the Statement of Claim
are denied.
 9. Paragraph 9 of the Statement of Claim is denied,
except that respondent admits that it had a
responsibility, which it faithfully fulfilled,
to diligently monitor the accounts of claimants.
 10. Paragraph 10 of the Statement of Claim is denied.
 11. Paragraph 11 of the Statement of Claim is denied
as inapplicable.

12. Paragraph 12 of the Statement of Claim is denied.
13. Respondent admits it permitted claimants to make various cash withdrawals from their accounts but denies the allegation, set forth in paragraph 13 of the Statement of Claim, that the accounts were in margin violation on such occasions.
14. Paragraph 14 of the Statement of Claim is denied.
15. Paragraph 15 of the Statement of Claim is denied, except that respondent admits it took liquidating action with respect to claimants' accounts when claimants failed to respond to respondent's calls for additional margin at the time the accounts became undermargined.
- 16-18. Paragraphs 16 through 18 of the Statement of Claim are denied.
19. Paragraph 19 of the Statement of Claim is denied, except that respondent admits it purchased certain call options to cover outstanding short option positions of claimants.

20-22. Paragraphs 20 through 22 of the Statement
of Claim are denied.

DATED: New York, N.Y.
July 19, 1974

Abraham & Co. Inc.

BY _____
Stuart L. Sindell/General Counsel



AMERICAN ARBITRATION ASSOCIATION 140 WEST 51 STREET, NEW YORK, N.Y. 10020

ROBERT E. MEADE
Director
New York Region

212-977-2951

August 16, 1974

RE: 1310 0693 74

Abraham & Co., Inc.
And

Don R. Daseke and Mary Ruth Daseke
d/b/a Daseke Options Associates

Don R. Daseke Mary R. Daseke &
Margarat M. Daseke also d/b/a
Daseke Options Associates and
Daseke Investment Co. Inc.

And
Abraham & Co. Inc. and Merkin & Co.

Stuart Sindell, Esq.
Attorney for Claimant
Abraham & Co.
120 Broadway
New York New York

Warren W. Eginton, Esq.
Cummings & Lockwood
P. O. Box 120
Stamford Conn. 06904

Merkin & Co., Inc.
Att: Mr. Michael Friedman
61 Broadway
New York New York 10006

Gentlemen:

We have received a copy of Mr. Eginton's letter of August 13, 1974 sent to Merkin & Co. Inc. as a covering for his client's Demand for Arbitration against Merkin & Co. Inc.

This will also serve to acknowledge our receipt of Mr. Sindell's letter of July 19, 1974 with which he forwarded the answer of Abraham & Co. Inc. to the statement of claim filed on behalf of the Dasekes. As I had previously advised you by telephone, we have appointed only one arbitrator from the first list submitted to and returned by Mr. Sindell and Mr. Eginton. His name is Mr. Frank N. Carbone of Coopers & Lybrand and he has disclosed the following:

"About six months ago I had a short business meeting with the controller of Abraham & Co. Inc. I had no previous or further contact with him or any individuals involved in this matter."

May we have your comments on this disclosure within one week's time in addition to your selections indicated on the enclosed second and final list of proposed arbitrators. Merkin & Co. is also granted

Exhibit J

Offices: Boston • Charlotte • Chicago • Cincinnati • Cleveland • Dallas • Detroit • Hartford • Los Angeles • Miami • Minneapolis • New Brunswick, N.J.
New York • Philadelphia • Phoenix • Pittsburgh • San Diego • San Francisco • Seattle • Syracuse • Washington, D.C.

61.

August 16, 1974

the seven days within which to file any answer and/or counter-claim to the demand served on it, as provided for in the Commercial Arbitration Rules, a copy of which is enclosed for Mr. Friedman.

May we also have a copy of the agreement between the Parties which stipulates that Merkin and Co. agrees to arbitrate its disputes before the American Arbitration Association so that our file can be complete.

Very truly yours,

Ellen Maltz
Ellen Maltz
Tribunal Administrator

EM:pb
Enc.

J-1

62.



AMERICAN ARBITRATION ASSOCIATION 140 WEST 51 STREET, NEW YORK, N. Y. 10020

(212) 977-2000
2956

ROBERT E. MEADE
Director
New York Region

September 4, 1974

RE: 1310-0693-74

Stuart Sindell, Esq.
Attorney for Claimant
Abraham & Co.
120 Broadway
New York, New York

Cummings & Lockwood
Att: Warren W. Eginton, Esq.
Attorney for Don R. Daseke et al.
P. O. Box 120
Stamford, Conn. 06904

Reavis & McGrath
Att: Victor P. Muskin, Esq.
Attorney for Merkin & Co., Inc.
1 Chase Manhattan Plaza
New York, New York 10005

Abraham & Co., Inc.
And
Don R. Daseke and Mary Ruth
Daseke
d/b/a Daseke Options Associates

Don R. Daseke Mary R. Daseke
Margaret M. Daseke also d/b/a
Daseke Options Associates and
Daseke Investment Co., Inc.
And
Abraham & Co., Inc. and
Merkin & Co.

Gentlemen:

This will acknowledge receipt on September 3, 1974 of a copy of an Order To Show Cause signed by Justice Peter A. Quinn on the application of Merkin & Co., Inc., against Don R. Daseke, et al.

The Association as directed in the Order, shall stay its administration of the Arbitration between those Parties pending the hearing on the application. We therefore ask Messrs. Enginton and Muskin to keep us advised of the court proceedings.

Since there is no stay of Arbitration regarding the matter between Abraham & Co., Inc., and Don R. Daseke et al., we ask Messrs. Sindell and Eginton whether they wish to hold that matter in abeyance pending the lifting of the court stay, or whether they wish us to proceed at this time.

May we hear from them no later than September 11, 1974.

Very truly yours,

Ellen Maltz
Ellen Maltz
Tribunal Administrator

EM:gs

Exhibit K

Offices: Boston • Charlotte • Chicago • Cincinnati • Cleveland • Dallas • Detroit • Hartford • Los Angeles • Miami • Minneapolis • New Brunswick, N.J.
New York • Philadelphia • Phoenix • Pittsburgh • San Diego • San Francisco • Seattle • Syracuse • Washington, D.C.

CUMMINGS & LOCKWOOD

ATTORNEYS AT LAW

ONE ATLANTIC STREET

STAMFORD, CONN. 06904

(203) 327-1700

September 9, 1974

EDWARD R. WINTERSON, JR.
FRANCIS P. SCHIAROLI
GEORGE F. LOHMAN
HOWARD S. TUMILL
RAYMOND T. STEEDICHT
MORGAN P. AMES
PHILIP M. ORRICK
RALPH A. NICHOLS
FRANCIS J. MENAHARA, JR.
WARREN W. EGINTON
CLIFFORD R. DUFFY, JR.
JOHN F. SPINDLER
RICHARD P. NICHOLSON
PHILIP A. MOREHOUSE
WILLIAM J. OVERLOCK
ROBERT T. GILHULY
WILLIAM R. LYNCH
WILLIAM H. AFRISON
RICHARD H. KALL, JR.
HOWARD A. KNIGHT
JAMES M. BARTON
DORRANCE SEATON, JR.
E. IAN MELACLAN
FREDRIC H. WEISBERG
W. ALAN TRUESDALE
GEORGE G. VEST
JOHN A. MCFERREY
FOSLER RAY
E. TERRY DURANT
ROBERT W. WORLEY, JR.
THOMAS P. STODOL, JR.
S. V. SCHOONMAKER, III
MARTIN A. PURCELL
JOHN A. SARANOSKI
GAYLE B. WILHELM
DAVID R. LEVETT
ROBERT A. BEER
RICHARD L. ROSE
ROBERT F. GRELE
RICHARD J. TOBIN
GEORGE M. NICHOLS
WALTER M. FIEDEROWICZ
JAMES F. BECHER
PAUL E. KNAG
SANDRA M. McLELLAN
GARY A. McMILLAN
PETER E. McWITT
JOHN P. WILLARD
LEE S. McREITHEN

GREENWICH OFFICE
TWO GREENWICH PLAZA
GREENWICH, CONN. 06830

DARIEN OFFICE
ONE CENTRE STREET
DARIEN, CONN. 06820

BRIDGEPORT OFFICE
855 MAIN STREET
BRIDGEPORT, CONN. 06604

FRANCIS J. MENAHARA, JR.
COUNSEL

American Arbitration Association
140 West 51st Street
New York, New York 10020

Att: Ms. Ellen Maltz

Re: 1310-0693-74
Abraham & Co., Inc. and Don R.
Daseke and Mary Ruth Daseke
d/b/a Daseke Options Associates

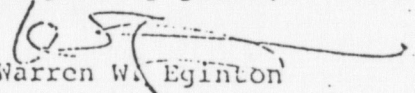
Don R. Daseke, Mary R. Daseke &
Margaret M. Daseke also d/b/a
Daseke Options Associates and
Daseke Investment Co., Inc. and
Abraham & Co, Inc. and
Merkin & Co.

Gentlemen:

This will respond to a letter from Ms. Ellen Maltz in
the above matter dated September 4, 1974.

Insofar as Don R. Daseke, et al are concerned, they are
willing to hold the arbitration in abeyance pending the resolution
of an application by Merkin & Co. to stay the arbitration proceedings
as against that company.

Very truly yours,


Warren W. Eginton

WWE:cm

cc: Stuart Sindell, Esq.
Victor P. Muskin, Esq.

Exhibit L

CUMMINGS & LOCKWOOD

ATTORNEYS AT LAW

ONE ATLANTIC STREET

STAMFORD, CONN. 06904

(203) 327-1700

November 19, 1974

EDWARD R. WILKINSON, JR.
FRANCIS A. SCHWAB
GEORGE F. LOWMAN
HOWARD S. TUTHILL
RAYMOND F. BENCOICT
MORGAN P. EVES
PHILIP M. DRAKE
RALPH A. NICHOLS
FRANCIS J. MCNAMARA, JR.
WARREN W. EGINTON
CLIFFORD R. CHAFF, JR.
JOHN F. BRINOLER
RICHARD P. WYCAITH
PHILIP A. MOREHOUSE
WILLARD J. OVERLOCK
ROBERT F. GILHULY
WILLIAM R. LYNCH
WILLIAM M. AFRINSON
BIGHAM M. WALL, JR.
HOWARD A. KNIGHT
JAMES M. BARTON
BORRANCE SEXTON, JR.
ELIAN MCLACHLAN
FREDRIC H. WEISBERG
ALAN TRUESDALE
GEORGE G. VEST
JOHN S. WIGGENEY
FOSTER PAW
E. TERRY OURANT
ROBERT W. WOLFF, JR.
THOMAS P. SAID, JR.
S. V. SCHOONMAKER, III
MARTIN A. PURCELL
JOHN A. KARANOSHI
GAYLE B. WILHELM
DAVID R. LEVETT
ROBERT A. BEER
RICHARD L. ROSE
ROBERT F. CRELE
RICHARD J. TOBIN
GEORGE H. NICHOLS
WALTER M. FIEDEROWICZ
JAMES F. BECKER
PAUL E. HADG
SANDRA M. McLEAN
GARY A. McMILLAN
PETER E. McWHITT
JOHN A. WILLARD
LEE S. McREITHEN

GREENWICH OFFICE
TWO GREENWICH PLAZA
GREENWICH, CONN. 06030

DARIEN OFFICE
ONE CENTRE STREET
DARIEN, CONN. 06020

BRIDGEPORT OFFICE
855 MAIN STREET
BRIDGEPORT, CONN. 06604

FRANCIS J. MCNAMARA, SR.
COUNSEL

American Arbitration Association
140 West 51st Street
New York, New York 10020

Att: Ms. Ellen Maltz

Re: 1310-0693074
Abraham & Co., Inc. and Don R.
Daseke and Mary Ruth Daseke
d/b/a Daseke Options Associates

Don R. Daseke, Mary R. Daseke &
Margaret M. Daseke also d/b/a
Daseke Options Associates and
Daseke Investment Co., Inc. and
Abraham & Co., Inc. and
Merkin & Co.

Gentlemen:

This will advise that this firm, in behalf of Don R. Daseke, Mary R. Daseke and Margaret Daseke, d/b/a Daseke Option Associates and Daseke Investment Co., Inc. has just instituted Civil Action No. 74 4957 in the United States District Court for the Southern District of New York and therefore will not proceed with the above arbitration, which it hereby withdraws in behalf of those parties.

Very truly yours,

WWE:cm
cc: Stuart Sindell, Esq.
Victor P. Muskin, Esq.

Warren W. Eginton

Exhibit M

Abraham & Co. Inc.

120 Broadway
New York, N.Y. 10005

MEMBER

NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE, INC.
COMMODITY EXCHANGE, INC.
NEW YORK COCOA EXCHANGE, INC.
NORTHWEST STOCK EXCHANGE, INC.
PACIFIC COAST EXCHANGE, INC.
NEW YORK COFFEE & SUGAR EXCHANGE, INC.
NEW STOCK EXCHANGE, INC.
CHICAGO BOARD OPTIONS EXCHANGE, INC.

TELEPHONE
(212) 732-7200
TELEX
WUI: 62415
ITT: 420992
RCA: 222848

BRANCHES
BOSTON, MASS.
DALLAS, TEXAS
WILMINGTON, DEL.

November 22, 1974

Ms. Phyllis Habif
Tribunal Administrator
American Arbitration Association
140 West 51 Street
New York, New York 10020

Re: 1310-0693-74

Abraham & Co., Inc.
and
Don R. Daseke and Mary Ruth Daseke
d/b/a Daseke Options Associates

Don R. Daseke Mary R. Daseke &
Margarat M. Daseke also d/b/a
Daseke Options Associates and
Daseke Investment Co., Inc.
and
Abraham & Co., Inc. and
Merkin & Co.

Dear Ms. Habif:

We wish to inform you that we will resist the efforts of our opposition to withdraw the above matters from arbitration and litigate them in U.S. District Court. We will take whatever steps are necessary to dismiss or stay the legal action and re-instate arbitration proceedings.

Very truly yours,

Stuart L. Sindell
Vice President/Legal Dept.

cc: Warren W. Eginton, Esq.
Cummings & Lockwood

SLS:1bk

Exhibit N

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DON R. DASEKE, MARY R. DASEKE AND :
MARGARET M. DASEKE D/B/A DASEKE :
OPTION ASSOCIATES AND DASEKE :
INVESTMENT ASSOCIATES, :

Plaintiffs, :

-against- :

ABRAHAM & CO., INC., MERKIN & CO., :
INC., CARL SLOVE, JOSEPH A. :
GOTTLIEB AND JULIUS CHERNY, :

Defendants. :

Civil No. 4957/74
(Judge Wyatt)

STIPULATION

-----X
IT IS HEREBY STIPULATED AND AGREED, by and between the
attorneys for the parties in the above-captioned action that:

1. The motion to dismiss by defendants Merkin & Co.,
Carl Slove and Julius Cherny presently returnable on March 21,
1975 is hereby adjourned to May 9, 1975;
2. The motion for a stay of this action pending arbitration
by defendants Abraham & Co. and Joseph A. Gottlieb presently
returnable on March 28, 1975 is hereby adjourned to May 9, 1975; and
3. Plaintiffs' opposition papers to the aforesaid motions
shall be served upon counsel for the defendants on or before

April 25, 1975.

Dated: New York, New York
March 21, 1975

REAVIS & McGRATH

By *Stephen R. Slonberg*
A Member of the Firm
Attorneys for Defendants
Merkin & Co., Inc., Slove
and Cherny
1 Chase Manhattan Plaza
New York, New York 10005
(212) 269-7600

BRAUNER BARON ROSENZWEIG &
KLIGLER

By *Charles Longway*
A Member of the Firm
Attorneys for Defendants
Abraham & Co. and Gottlieb
120 Broadway
New York, New York 10005

CUMMINGS & LOCKWOOD

By *Leon W. S. [Signature]*
A Member of the Firm
Attorneys for Plaintiffs
One Atlantic Street
Stamford, Connecticut 06904

BLEAKLEY, PLATT, SCHMIDT & FRITZ

By Robert L. Casper
A Member of the Firm
Local Counsel for Plaintiffs
120 Broadway
New York, New York 10005

SO ORDERED
March , 1975

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

DON R. DASEKE, MARY R. DASEKE
and MARGARET M. DASEKE D/B/A
DASEKE OPTION ASSOCIATES and
DASEKE INVESTMENT ASSOCIATES,

Plaintiffs,

v.

ABRAHAM & CO., INC., MERKIN &
CO., INC., CARL SLOVE, JOSEPH A.
GOTTLIEB and JULIUS CHERNY,

Defendants.

CIVIL NO. 4957/74

JUDGE WYATT

AFFIDAVIT

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

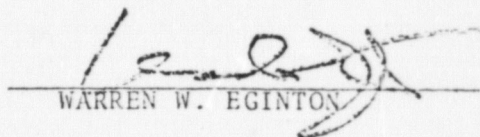
ss: Stamford, March 27, 1975

WARREN W. EGINTON, having been duly sworn, deposes
and says:

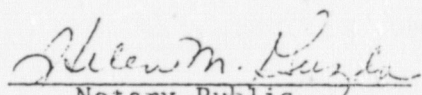
1. That he is a partner of the law firm of Cummings & Lockwood in Stamford, Connecticut.
2. That before becoming associated with Cummings & Lockwood in October, 1953, he was, from May, 1951 through September, 1953, an associate of the law firm of Davis, Polk & Wardwell in New York City.
3. That he was admitted to practice before the Appellate Division of the Supreme Court in the State of New York in the Second Department on April 2, 1952, and that he remains to be in good standing on the records of said court.
4. That he was admitted to practice in this court, the United States District Court for the Southern District of New York on April 28, 1953, and that he remains to be in good standing on the records of this court.

5. That he was admitted to practice before the United States Court of Appeals for the Second Circuit on May 11, 1953, and that he remains to be in good standing on the records of said court.

6. That he has filed an appearance in the above-captioned matter, and that pursuant to Local Rule 4(a) of the General Rules of the United States District Court for the Southern District of New York, he has designated an attorney within the Southern District for the service of papers upon him.


WARREN W. EGINTON

Subscribed and sworn to
before me this 27th day
of March, 1975.


Notary Public
HELEN M. GUZDA
Notary Public, State of Connecticut
Commission Expires April 1, 1976

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

DON R. DASEKE, MARY R. DASEKE)	
and MARGARET M. DASEKE D/B/A)	
DASEKE OPTION ASSOCIATES and)	
DASEKE INVESTMENT ASSOCIATES,)	CIVIL NO. 4957/74
)	
Plaintiffs,)	
)	JUDGE WYATT
v.)	
)	
ABRAHAM & CO., INC., MERKIN &)	
CO., INC., CARL SLOVE, JOSEPH A.)	
GOTTLIEB and JULIUS CHERNY)	<u>AFFIDAVIT</u>
)	
Defendants.)	

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss: Stamford, March 27, 1975

HOWARD ATWOOD KNIGHT, having been duly sworn, deposes and says:

1. That he is a partner of the law firm of Cummings & Lockwood in Stamford, Connecticut.
2. That before becoming associated with Cummings & Lockwood in June, 1969, he was, from May, 1966 through June, 1969, an associate of the law firm of Sullivan & Cromwell in New York City.
3. That he was admitted to practice before the Appellate Division of the Supreme Court in the State of New York in the First Department on June 24, 1968, and that he remains to be in good standing on the records of said court.
4. That he was admitted to practice in this court, the United States District Court for the Southern District of New York on July 16, 1970, and that he remains to be in good standing on the records of this court.

59.

5. That he has filed an appearance in the above-captioned matter, and that pursuant to Local Rule 4a of the General Rules of the United States District Court for the Southern District of New York, he has designated an attorney within the Southern District for the service of papers upon him.

Howard Atwood Knight
Howard Atwood Knight

Subscribed and sworn to
before me this 27th day
of March, 1975.

Helen M. Guzda
Notary Public

HELEN M. GUZDA
Notary Public, State of Connecticut
Commission Expires April 1, 1976

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----X
: DON R. DASEKE, MARY R. DASEKE AND :
: MARGARET M. DASEKE D/B/A DASEKE :
: OPTION ASSOCIATES AND DASEKE :
: INVESTMENT ASSOCIATES, :
: :
: Plaintiffs, :
: :
: - against - :
: :
: ABRAHAM & CO., INC., MERKIN & CO., :
: INC., CARL SLOVE, JOSEPH A. GOTTLIEB :
: AND JULIUS CHERNY, :
: :
: Defendants. :
: :
: -----X

CIVIL NO. 4957/74
JUDGE WYATT

AFFIDAVIT OF DON R. DASEKE

STATE OF New York)
) ss:
COUNTY OF Westchester)

DON R. DASEKE, being duly sworn, deposes and says:

1. I am a general partner in both Daseke Option Associates and Daseke Investments Associates and am a named plaintiff in the above-entitled action. I am familiar with all the facts and circumstances hereinafter set forth and I submit this Affidavit in opposition to defendants Abraham & Co., Inc., ("Abraham") and Joseph Gottlieb's Motions to Stay further proceedings against defendants.

2. Prior to June 1973 plaintiffs maintained certain brokerage accounts with Advest Co. ("Advest"). Advest's registered representative in charge of the accounts was Carl Slove.

3. In June of 1973, Carl Slove telephoned me and stated that he was leaving the employ of Advest to become a registered representative with Merkin & Co., Inc. ("Merkin") at Merkin's 61 Broadway office. Mr. Slove asked whether I would consider moving the brokerage accounts from Advest to Merkin. He stated that if the accounts were moved to Merkin, the accounts would actually be carried on the books of Abraham, pursuant to a special agreement between Abraham and Merkin. He said that such an arrangement would be advantageous because Abraham was a larger organization with a more efficient back office. Further, since the accounts were engaged in the writing of option contracts, which required the endorsement of a broker-dealer, he stated that the proposed arrangement would be beneficial in that the option contracts written by the accounts would carry Abraham's endorsement.

4. These representations by Mr. Slove were subsequently confirmed at various times by defendant Julius Cherny, and by Edith Miller, a registered representative in Merkin's employ. In addition, Mr. Slove's representations were confirmed by defendant Gottlieb and by Harold Friedman, Vice-Chairman of Abraham.

5. As a consequence, I agreed to transfer the plaintiff's brokerage accounts from Advest to Merkin. I so advised Mr. Slove and requested that he furnish me with the necessary documentation to effect the transfer.

6. I subsequently received Customer's Agreements in the mail from Mr. Slove, who requested that plaintiffs execute the agreements and return them to Merkin. These Customer's Agreements were in form agreements between plaintiffs

and Abraham. They were subsequently executed and returned them to Merkin as Mr. Slove had requested.

7. After the brokerage accounts were transferred, all orders with respect to transactions in the accounts were placed with Merkin through its registered representatives, principally Slove and Edith Miller. After the transactions were executed, confirmations were received from Abraham. All confirmations bore a legend substantially as follows: "Upon instructions of Merkin & Co., Inc.". Monthly statements for the accounts were received from Abraham with the following legend imprinted thereon: "Carried by arrangement with Merkin & Co., Inc.".

8. Merkin was intimately involved in all matters concerning these brokerage accounts and, through its representatives actively participated in all important meetings and decisions affecting the accounts.

9. In October of 1973, the plaintiffs received an initial notification that the accounts were undermargined and I met for several hours with Cherny of Merkin concerning the margin status of the accounts. Cherny advised me that any decisions concerning the margin status of the accounts would have to be made by both Merkin and Abraham.

10. I therefore subsequently met with Messrs. Cherny and Friedman concerning the margin status of the accounts. Mr. Friedman represented Abraham. At this meeting I was informed that the defendants would not liquidate the accounts and that I would be allowed to continue to transact business in the accounts.

11. Over the course of the next half year plaintiffs

continued to effect securities transactions in the accounts. Defendants executed numerous orders to purchase securities for the accounts and the accounts wrote a variety of option contracts against their security positions.

12. On May 21, 1974 I received two telegrams from Abraham demanding that plaintiffs immediately deposit \$325,000 in cash or other collateral to bring the accounts into margin compliance. The telegrams stated that if the funds were not received by 10:00 o'clock the following morning Abraham would immediately begin to liquidate. The requested \$325,000 deposit was not made and defendants began precipitiously to liquidate the accounts without regard to the outstanding option contracts and other special circumstances.

13. I immediately notified defendants that I strongly disagreed with their illogical and unwarranted actions. On May 29, 1974 I wrote defendant Gottlieb in order to reaffirm plaintiffs' disapproval. Copies of this letter was sent to Stuart Sindell of Abraham and to defendants Cherny and Slove. I told Gottlieb I intended to seek monetary damages for defendants' course of conduct. See Exhibit A attached hereto.

14. Defendants' wholesale and illogical liquidation did not bring the accounts into margin compliance. Instead, it worsened the accounts' margin status and substantially eroded the equity therein.

15. On June 20, 1974 Abraham sent a letter to plaintiffs demanding an additional \$276,000 in cash or collateral to cover the margin indebtedness remaining after defendants' liquidation. The letter went on to state that unless these funds were furnished to Abraham by June 28, 1974, Abraham

would submit the matter to arbitration. The letter concluded: "If arbitration becomes necessary, the choice of forum shall be ours to make unless you make the selection by notification to us by registered mail on or before June 28." See Exhibit B attached hereto.

16. The previously mentioned customer's agreements stated that if plaintiffs failed to select a forum for arbitration within five days, the choice would pass to Abraham. I feared that if I did not exercise a choice, Abraham would choose the Board of Arbitration of The New York Stock Exchange, an organization with I believed would be kindly disposed toward Abraham. Therefore, in order to protect plaintiffs' rights in the event that the dispute did go to arbitration, I notified the American Arbitration Association of my wish to arbitrate under its rules any possible dispute that might arise between Abraham, Merkin and the plaintiff. See Exhibit C attached hereto.

17. On July 1, 1974 Abraham formally commenced arbitration proceedings with the American Arbitration Association by filing a Demand for Arbitration and Statement of Claim. This submission to arbitration only listed Abraham and plaintiffs as parties. Because of the close relationship of Merkin and Abraham in the handling of the accounts, I was gravely concerned that a complete resolution could not be accomplished without Merkin being joined in the proceedings. Therefore, I attempted to institute arbitration proceedings on behalf of the plaintiffs against Merkin and Abraham by

having counsel file a Demand for Arbitration with the American Arbitration Association naming both Merkin and Abraham as respondents. Counsel requested that plaintiffs' claim be jointed with that of Abraham to avoid duplication.

18. However, Merkin declined to arbitrate. In September 1974, Merkin moved in the Supreme Court, New York County, for an order staying arbitration. Merkin claimed that it was not a signatory to the customer's agreement and that it therefore was not bound by any compulsory arbitration clause. Through counsel, plaintiffs filed a brief and affidavit in opposition to Merkin's motion.

19. On or about September 6, 1974 plaintiffs' counsel served Merkin with a subpoena duces tecum, ordering that Merkin produce all documents relevant to its arrangement with Abraham concerning plaintiffs' brokerage accounts. On or about September 17, 1974 Merkin applied for an order to quash the subpoena.

20. The American Arbitration Association informed plaintiffs, by a letter dated September 4, 1974, that it would stay its proceedings pending the outcome of the motion. The letter asked whether the parties wished the arbitration proceedings also stayed between plaintiffs and Abraham.

21. On September 9, 1974, plaintiffs' attorneys notified the American Arbitration Association that the proceedings against Abraham should be similarly stayed. The following day Stuart Sindell of Abraham wrote the American Arbitration Association agreeing that the arbitration proceedings be stayed until the State Court motion was determined.

Faced with Merkin's continuing resistance to both arbitration and discovery, it became apparent that arbitration was not the proper forum in which to conclusively resolve plaintiffs' dispute with Merkin and Abraham. I therefore conferred with my attorneys and determined to commence the present federal action in order to obtain jurisdiction over all defendants. I directed that further efforts to induce Merkin to arbitrate jointly with Abraham be suspended. Counsel withdrew plaintiffs' opposition to the State Court proceedings instituted by Merkin and prepared the complaint in the present action which was filed on November 19, 1974.

Dated: This 30th day of April 1975.

Don R. Daseke

Sworn and subscribed to before
me this day of April 1975.

Notary Public

DASEKE & CO., INC.
6 CORPORATE PARK DRIVE
WHITE PLAINS, N.Y. 10604
914-694-1510

DON R. DASEKE
PRESIDENT

May 29, 1974

Mr. Joseph A. Gottlieb
Senior Vice President
Abraham & Co., Inc.
120 Broadway
New York City, New York 10005

Dear Mr. Gottlieb:

As we indicated to Mr. Sindell, yourself and Carl Slove last week, we disagree emphatically with the actions you took over the last few days in our accounts, Daseke Option Associates and Daseke Investment Associates. We believe the actions you unilaterally implemented were inconsistent, illogical and executed precipitously without regard to their effect upon the equity status of our accounts.

On the advice of counsel, we have decided not to seek relief against further such actions since an injunction seems to be legally inappropriate in this instance. Instead, we believe that dollar damages from your actions can be identified and relief thus obtained by our action for damages. The purpose of this letter is to notify both Abraham, you, and Merkin & Co., Inc. of our intention to seek such remedy.

We regret very much ourselves the action that you decided to take with our accounts. We regret even more that your actions leave us no alternative but to seek relief from the damages you have caused.

Sincerely,

Don R. Daseke
President

DRD:mrđ

cc: Mr. Stewart Sindell
Mr. Julius Cherny
Mr. Carl Slove

Ex. A

81.

Abraham V. Co. Inc.

*120 Broadway
New York, N.Y. 10005*

MEMBER
NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE, INC.
COMMODITY EXCHANGE, INC.
NEW YORK COCOA EXCHANGE, INC.
NORTHWEST STOCK EXCHANGE, INC.
PACIFIC COAST STOCK EXCHANGE
NEW YORK COFFEE & SUGAR EXCHANGE, INC.
PDA STOCK EXCHANGE, INC.
CHICAGO BOARD OPTIONS EXCHANGE, INC.

TELEPHONE:
(212) 732-7200
TWX: 710-581-3394
CABLE: "ABRACO"

BRANCHES:
DALLAS, TEXAS
WILMINGTON, DEL.

June 20, 1974

REGISTERED MAIL

Mr. Don R. Daseke
Daseke Option Associates
Daseke Investment Associates
6 Corporate Park Drive
White Plains, N.Y. 10604

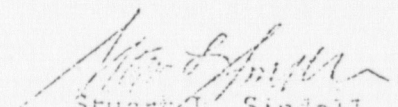
Re: Daseke Option Associates (DOA)
Daseke Investment Associates (DIA)

Dear Mr. Daseke:

In view of the undermargined condition of your accounts listed above, we have decided to call our margin loans and demand payment in full of the current debit balance of \$274,108 in the DOA account and \$2,158.97 in the DIA account, plus any accrued interest. In the alternative, we would accept additional margin, in the form of cash or equivalent collateral, in the amount of \$218,710 for the DOA account and in the amount of \$22,648 for the DIA account, to properly margin such accounts.

In the event you fail to furnish us with sufficient funds to either discharge your margin debts or properly margin your accounts by Friday, June 28, 1974, we shall proceed to enforce our rights against you by submitting this matter to arbitration. If arbitration becomes necessary, the choice of forum shall be ours to make unless you make the selection by notification to us by registered mail on or before June 28th.

Very truly yours,


Stuart L. Sirdell
Vice President/Legal Department

SLS/hd

Ex.B

82.

Room 101
6 Corporate Park Drive
White Plains, New York 10604
June 26, 1974

American Arbitration Association
140 W. 51st Street
New York, New York

Gentlemen:

Re: Daseke Option Associates
Daseke Investment Associates

The purpose of this letter is to advise you of the election of Daseke Option Associates and Daseke Investment Associates to submit their disputes with Abraham & Co., Inc. and Merkin & Co., Inc. to a arbitration in accordance with the rules of the American Arbitration Association. These disputes arise under and in connection with margin account agreements between the parties providing that controversies are to be settled by arbitration. A copy of the form of such margin agreements is enclosed.

Very Truly Yours,

Daseke Option Associates
Daseke Investment Associates

By Don R. Daseke
Don R. Daseke

DRD:cst
cc: Mr. Stuart L. Sindell
Vice President/Legal Department
Abraham & Co., Inc.
120 Broadway
New York, New York 10005

Ex C

83.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

DON R. DASEKE, MARY R. DASEKE AND
MARGARET M. DASEKE D/B/A DASEKE
OPTION ASSOCIATES AND DASEKE
INVESTMENT ASSOCIATES,

Plaintiffs,

-against-

ABRAHAM & CO. INC., MERKIN & CO., INC.
CARL SLOVE, JOSEPH A. GOTTLIEB AND
JULIUS CHERNY,

Defendants.

SEIVED	5/15/75
FILED	9/15/75
CLERK	
DIARY	
LEDGER	5/15/75

CIVIL NO. 4957/74

JUDGE WYATT

REPLY
AFFIDAVIT OF STUART L. SINDELL

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

STUART L. SINDELL, being duly sworn, deposes and says:

1. I am an attorney at law and during all times hereinafter set forth was employed by ABRAHAM (all capitalized terms are used as defined in my earlier affidavit herein sworn to March 12, 1975) as a Vice-President and Legal Officer; I am familiar with all the facts and circumstances hereinafter set forth; and I make this affidavit in reply to the affidavit of Don R. Daseke, one of the plaintiffs herein, dated April 30, 1975, in opposition to the motion made on behalf of defendants ABRAHAM and GOTTLIEB herein, to compel plaintiffs to proceed with a pending arbitration and to stay further proceedings herein

against said defendants pending completion of said arbitration.

2. Although the merits of plaintiffs' complaint herein are not directly in issue on this motion, to avoid any incorrect inference, I hereby categorically assert, on behalf of defendants ABRAHAM and GOTTLIEB, that plaintiffs' accounts with defendant ABRAHAM were not, in October 1973, in violation of the margin requirements of Regulation T of the Board of Governors of the Federal Reserve System or the Regulations of the New York Stock Exchange (as asserted in Paragraph 9 of the affidavit of Don R. Daseke), nor were they in violation of such regulations at any time within the six months thereafter (as suggested although not directly asserted in Mr. Daseke's affidavit). I am informed by Mr. Harold Friedman that the subject of the discussions at the meeting in October 1973 (the meeting referred to in Paragraph 10 of Mr. Daseke's affidavit) was whether the plaintiffs would be able to respond to any margin call or other corrective action that might be required under Federal regulations, Exchange rules or ABRAHAM's internal house margin rules. At said meeting Mr. Daseke demonstrated a full understanding of the difference between ABRAHAM's house rules and the applicable Federal and NYSE regulations and reassured ABRAHAM as to his financial ability expressing his readiness and willingness to meet any applicable margin obligation. At no time did defendants ABRAHAM or GOTTLIEB inform or assure the plaintiffs herein that their accounts would be allowed to fall in violation of the applicable

Federal and Stock Exchange regulations, or that ABRAHAM would take no corrective action in the event such a situation arose. These assertions are made solely for the purpose of making clear to the Court the fact that the merits of plaintiffs' claim are not admitted, and are indeed vigorously contested, by defendants ABRAHAM and GOTTLIEB.

3. As is clear from Mr. Daseke's affidavit, plaintiffs acknowledge that they did enter into customer and margin agreements with ABRAHAM, each of which contained an arbitration clause, by which plaintiffs agreed to arbitrate any dispute with ABRAHAM. A copy of one of these margin agreements, executed November 1, 1973, was annexed as Exhibit A to my previous affidavit.

4. Subsequently, when this dispute arose, plaintiffs (having, I believe, already consulted counsel, see Paragraph 7) wrote a letter, dated June 26, 1974 directed solely to me, as Vice-President of ABRAHAM, a copy of which is annexed hereto and marked as Exhibit I. That letter began as follows:

"In response to your letter of June 20th, please be advised of our election to arbitrate in accordance with the rules of the American Arbitration Association".

5. This letter, itself constitutes a written agreement to arbitrate signed by Don R. Daseke on behalf of the plaintiffs. The letter was unconditional. It did not assert that the plaintiffs only wished to arbitrate if MERKIN could be brought into the proceeding, and, indeed MERKIN was not sent a copy of the letter.

6. The aforesaid letter to ABRAHAM, dated June 26, 1974, constituted a reaffirmation by plaintiffs of their agreement with ABRAHAM, dated November 1, 1973, to arbitrate any disputes between them. Plaintiffs clearly, unconditionally and after the development of the dispute elected to enforce their arbitration agreement with ABRAHAM. The assertion that plaintiffs' agreement to arbitrate with ABRAHAM was somehow conditional upon the plaintiffs' success in bringing MERKIN into the same proceeding is thus without logic or support, since plaintiffs' act was clearly to the contrary.

7. From plaintiffs' letter, dated May 29, 1974, directed to GOTTLIEB, annexed as Exhibit A to Don R. Daseke's affidavit, it is clear that plaintiffs had consulted legal counsel on this matter as early as May 29, 1974. Thus, it must be presumed that plaintiffs acted with the benefit of legal advice when on June 26, 1974, they reaffirmed their arbitration agreement. Mr. Daseke does not assert the contrary.

8. Thereafter, as set forth in my previous affidavit, plaintiffs through their legal counsel, again reaffirmed their agreement to arbitrate with ABRAHAM. On July 12, 1974 plaintiffs' counsel mailed a Demand for Arbitration (Initiating Arbitration No. 2) to the American Arbitration Association, naming plaintiffs as claimants and naming ABRAHAM as one of the respondents. The Demand began as follows:

Named claimants parties to an arbitration agreement contained in written contracts dated June 1973, July 1973

and November 1973, providing for arbitration, hereby demand arbitration thereunder.

A copy of said Demand was annexed as Exhibit G to my previous affidavit. The written contracts referred to are those between plaintiffs and ABRAHAM.

9. Furthermore, throughout the period in question, from May 1974 through the initial months of the arbitration procedure, I communicated with Don R. Daseke and with his attorneys on numerous occasions, and at no time did either Mr. Daseke or his attorneys indicate that it had been their intent to arbitrate with ABRAHAM only on the condition that MERKIN be joined as a party to the proceeding.

10. Even after MERKIN sought a court order staying arbitration against it, plaintiffs gave no indication that they had any such intent. On September 4, 1974, the AAA announced receipt of MERKIN'S motion for a stay of Arbitration No. 2 against it, and requested advice as to whether to proceed with Arbitration No. 1. Plaintiffs, by their attorneys, responded in a letter annexed as Exhibit L to my previous affidavit. Again, the letter contains absolutely no indication that plaintiffs intended, or considered themselves bound, to continue with the arbitrations only if MERKIN remained a party to the proceedings.

11. Plaintiffs have sought to minimize their role in sending this dispute to arbitration, but from the foregoing and from the information set forth in my previous affidavit, the

following are clearly demonstrated:

(1) plaintiffs did, on November 1, 1973, agree to arbitrate exclusively with ABRAHAM (Exhibit A to my previous affidavit).

(2) on June 26, 1974, after the genesis of this dispute, plaintiffs reaffirmed said agreement to arbitrate with ABRAHAM (Exhibit I hereto).

(3) on July 12, 1974, the Demand for Arbitration (Arbitration No. 2) prepared and submitted by plaintiffs' attorneys again reaffirmed said arbitration agreement (Exhibit G to my previous affidavit, and language quoted above.)

(4) neither plaintiffs' letter to ABRAHAM, dated June 26, 1974, nor plaintiffs' Demand for Arbitration, dated July 12, 1974, made plaintiffs' reaffirmation of its agreement to arbitrate with ABRAHAM conditional upon MERKIN'S agreement to participate in such proceeding.

(5) for several months after the initiation of Arbitration No. 1 by ABRAHAM, and the initiation of Arbitration No. 2 by plaintiffs, plaintiffs did not assert that they had agreed to arbitrate only on the condition that MERKIN join in the proceeding.

(6) indeed, even after MERKIN evidenced its intention to oppose its inclusion in the arbitration proceeding, plaintiffs failed for several months to give any indication that they did not intend, or considered themselves not bound, to continue with arbitration in the event MERKIN were not a party to the

proceeding.

(7) lastly, plaintiffs' position that they had agreed to arbitrate only if both ABRAHAM and MERKIN joined in the arbitration proceeding is indeed self-serving, for as acknowledged in Mr. Daseke's affidavit, plaintiffs withdrew their opposition to MERKIN'S motion to stay the arbitration as against it before the motion was decided by the Court. Thus, plaintiffs acquiesced in MERKIN'S withdrawal from the proceeding, and now urge that very condition as a basis for their need to initiate this action.

12. Clearly, as demonstrated by the Memoranda of Law submitted on behalf of ABRAHAM and on behalf of the plaintiffs, plaintiffs had their choice in June of 1974 as to whether they wished to affirm their arbitration agreement with ABRAHAM, or whether they wished to initiate a federal action. We believe that we have demonstrated that plaintiffs clearly, knowingly, and with the advice of legal counsel, made their choice and agreed to arbitrate. We think it reasonable to require them to live by it. Their vacillation has already caused a year's delay in the resolution of this dispute and considerable prejudice to ABRAHAM. Such conduct should not be encouraged.

WHEREFORE, defendants ABRAHAM and GOTTLIEB respectfully

request that the relief prayed for in their notice of motion be granted.

/s/
Stuart L. Sindell

Sworn to before me this
15 day of May 1975.

/s/
Notary Public

HARVEY J. ISHOFSKY
No. 24-4507524 Qual. in Kings Co.
NOTARY PUBLIC, State of New York
Commission Expires March 30, 1977

Room 101
6 Corporate Park Drive
White Plains, New York 10604
June 26, 1974

Mr. Stuart L. Sindell
Vice President/Legal Department
Abraham & Co., Inc.
120 Broadway
New York, N.Y. 10005

Dear Mr. Sindell:

Re: Daseke Option Associates
Daseke Investment Associates

In response to your letter of June 20th, please be advised of our election to arbitrate in accordance with the rules of the American Arbitration Association. Enclosed is a copy of our notice of the dispute to the Association of even date.

As we have previously advised you on numerous occasions, your actions to date and any future actions in connection with our accounts have been and continue to be at your peril.

Very Truly Yours,

Daseke Option Associates
Daseke Investment Associates

By Don R. Daseke
Don R. Daseke

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----X
DON R. DASEKE, MARY R. DASEKE AND
MARGARET M. DASEKE D/B/A DASEKE
OPTION ASSOCIATES AND DASEKE
INVESTMENT ASSOCIATES,

Plaintiffs,

-against-

ABRAHAM & CO., INC., MERKIN & CO.,
INC., CARL SLOVE, JOSEPH A. GOTTLIEB
AND JULIUS CHERNY,

Defendants
-----X

CIVIL NO. 4957/74

JUDGE WYATT

AFFIDAVIT OF WARREN W. EGINTON

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss.: STAMFORD

21 May 1975

WARREN W. EGINTON, having been duly sworn, deposes
and says:

1. I am an attorney at law admitted to practice
before the United States District Court for the Southern
District of New York and am attorney for the plaintiffs in
the above-entitled action.
2. I am familiar with all of the facts and circum-
stances hereinafter set forth.
3. I make this affidavit in response to an affidavit
of Stuart L. Sindell, which was served and filed with the
Court in conjunction with a reply memorandum for the defendant
Abraham & Co., Inc. just prior to the argument on the motion
to stay made by Abraham & Co., Inc.

4. Paragraph 4 of the Sindell May 15 affidavit quotes from a letter dated June 26, 1974 from Don Daseke to Abraham, which letter is then annexed to the affidavit as Exhibit I. The Abraham demand letter to Daseke dated June 20, 1974 is not annexed to the Sindell affidavit, so that the Court is given the impression that the first election of arbitration was by the plaintiff Don Daseke.

5. The Sindell affidavit of May 15, 1975 is therefore consistent with, and repeats the error of, the Sindell affidavit of March 12, 1975 which was filed as part of the motion papers with the original Abraham motion to stay. Paragraphs 9 and 10 of that original Sindell affidavit are misleading in that Paragraph 9 refers to a demand by Abraham made on June 20, 1974, but does not give the text of the demand letter and the affidavit does not attach the June 20, 1974 letter as an exhibit. Instead, Paragraph 10 of the original Sindell affidavit begins a new heading entitled "THE AGREEMENT TO ARBITRATE", and then quotes in full the Daseke letter of June 26, 1974 which is then annexed to the original Sindell affidavit as Exhibit B.

6. By concentrating on the Daseke letter of June 26, 1974 and by ignoring the final paragraph of the Abraham demand letter of June 20, 1974, Abraham & Co., Inc. gives the impression that Daseke initiated the arbitration.

7. Annexed hereto as Exhibit A is a letter dated June 20, 1974 from Stuart Sindell to Don Daseke, the last paragraph of which reads as follows:

"In the event you fail to furnish us with sufficient funds to either discharge your margin debts or properly margin your accounts by Friday, June 28, 1974, we shall

proceed to enforce our rights against you by submitting this matter to arbitration. If arbitration becomes necessary, the choice of forum shall be ours to make unless you make the selection by notification to us by registered mail on or before June 28th."

8. Paragraph 11 of the Sindell reply affidavit of May 15, 1975 refers back to his prior affidavit and claims to demonstrate that the plaintiffs agreed to arbitrate on November 1, 1973 when they signed the original margin agreement and again on June 26, 1974 when they replied to the June 20th letter of Abraham. The short answer to such a contention is that the November 1, 1973 margin agreement as a document concerning future arbitrations is of no validity whatsoever because of the line of cases commencing with Wilko v. Swan, as fully submitted on the motion papers and memoranda in support thereof filed by all of the parties, and the June 26, 1974 Daseke letter was a reply compelled by the election of the June 20, 1974 Abraham letter, as above noted.

9. The Sindell May 15 affidavit then makes a point which would appear to have no relevance whatsoever but is nevertheless not factual. Mr. Sindell claims that at no time was arbitration with Abraham made conditional on the inclusion of Merkin. The actual facts are as shown by the two letters annexed hereto as Exhibits B and C, the first constituting my letter to the American Arbitration Association under date of July 12, 1974, the third paragraph of which requested that the Daseke arbitration against Merkin and Abraham be joined with the Abraham arbitration against Daseke. This July 12, 1974 letter was responded to affirmatively by Mr. Sindell

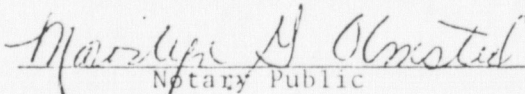
himself in behalf of Abraham by his letter of July 19, 1974 to the American Arbitration Association agreeing with the Daseke request for a joinder and consolidation of the arbitrations. After that date, there were no further contacts by counsel for Daseke with counsel for Abraham because the concentration was on the dispute with Merkin over arbitration, which dispute was being waged in the Supreme Court, New York County and involved only counsel for Merkin.

10. The undersigned, having personal knowledge, therefore affirms that at all times since he became counsel for Daseke on July 12, 1974 his position has been unwavering and consistently communicated to all counsel that the desire of Daseke is to be in one tribunal in a proceeding that will dispose of the claims involving both Merkin and Abraham coincidentally.

11. For the reasons submitted in the memorandum of law filed by the plaintiffs in opposition to Abraham's motion to stay, the proper forum for a determination of securities transactions disputes is the Federal Court and the right to be before that Federal Court has not been waived by any of the actions, taken on an administrative and reactive basis in the arbitration, by the plaintiffs.


Warren W. Eginton

Subscribed and sworn to before
me this 21st day of May, 1975.


Marilyn M. Olmsted
Notary Public
My Commission Expires Mar. 31, 1979

MEMBER
NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE, INC.
NATIONAL STOCK EXCHANGE, INC.
NATIONAL BOARD OF TRADES, INC.
NATIONAL COMMODITY EXCHANGE, INC.
NATIONAL FUTURE EXCHANGE, INC.
NATIONAL OPTION EXCHANGE, INC.
NATIONAL COMMODITY EXCHANGE, INC.
NATIONAL FUTURE EXCHANGE, INC.
NATIONAL OPTION EXCHANGE, INC.
CHICAGO BOARD OF TRADE, INC.
CHICAGO BOARD OF OPTIONS EXCHANGE, INC.

*120 Broadway
New York, N.Y. 10005*

EXHIBIT A

TELEPHONE
FAX
CABLE
BRANCHES
DALLAS, TEXAS
WILMINGTON, DEL.

June 20, 1974

REGISTERED MAIL

Mr. Don R. Daseke
Daseke Option Associates
Daseke Investment Associates
6 Corporate Park Drive
White Plains, N.Y. 10604

Re: Daseke Option Associates (DOA)
Daseke Investment Associates (DIA)

Dear Mr. Daseke:

In view of the undermarginned condition of your accounts listed above, we have decided to call our margin loans and demand payment in full of the current debit balance of \$274,108 in the DOA account and \$2,158.97 in the DIA account, plus any accrued interest. In the alternative, we would accept additional margin, in the form of cash or equivalent collateral, in the amount of \$218,710 for the DOA account and in the amount of \$22,648 for the DIA account, to properly margin such accounts.

In the event you fail to furnish us with sufficient funds to either discharge your margin debts or properly margin your accounts by Friday, June 28, 1974, we shall proceed to enforce our rights against you by submitting this matter to arbitration. If arbitration becomes necessary, the choice of forum shall be ours to make unless you make the selection by notification to us by registered mail on or before June 23rd.

Very truly yours,

[Signature]
[Name]
[Title]

EXHIBIT A

97

July 12, 1974

Miss Ellen Maltz
Tribunal Administrator
American Arbitration Association
140 West 51st Street
New York, New York 10020

Re: Don R. Daseke, Mary R. Daseke & Margaret
M. Daseke; also d/b/a Daseke Investment
Associates & Daseke Option Associates v.
Abraham & Co., Inc. and Merkin & Co., Inc.

Dear Miss Maltz:

Enclosed herewith please find a specific demand for arbitration filed in behalf of my clients, Don R. Daseke, Mary R. Daseke & Margaret M. Daseke; also d/b/a Daseke Investment Associates & Daseke Option Associates against Abraham & Co., Inc. and Merkin & Co., Inc., pursuant to the original claim letter filed with you under date of June 26, 1974.

The transactions which give rise to this demand for arbitration arise out of the trading accounts, one of which has been made the subject of your arbitration No. 1310 0693 74, which was initiated on July 3, 1974.

In that matter, which in my judgment should be joined for hearing with the instant claim, I am enclosing herewith an itemized response to the Abraham & Co. Statement of Claim.

In that action, I am also returning the date calendar and our estimation as to the length of the hearing, together with the arbitration list, with order of preference designated.

Miss Ellen Maltz

-2-

July 12, 1974

These same documents would apply to the arbitration demand that my client submitted on June 26, 1974, as made more specific herein.

I am enclosing a check to your order in the amount of \$200, in view of the indeterminate nature of the claim.

Very truly yours,

Warren W. Eginton

WWE:cm
Enclosures

Abraham & Co. Inc.

*120 Broadway
New York, N.Y. 10005*

EXHIBIT C

MEMBER
NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE, INC.
COMMODITY EXCHANGE, INC.
NEW YORK COCOA EXCHANGE, INC.
MIDWEST STOCK EXCHANGE, INC.
PACIFIC COAST STOCK EXCHANGE
NEW YORK COFFEE & SUGAR EXCHANGE, INC.
PSX STOCK EXCHANGE, INC.
CHICAGO BOARD OPTIONS EXCHANGE, INC.

TELEPHONE:
(212) 732-7200
TWX: 710-581-3394
CABLES: "ABRACO"

BRANCHES:
DALLAS, TEXAS
WILMINGTON, DEL.

July 19, 1974

Miss Ellen Maltz
Tribunal Administrator
American Arbitration Association
140 West 51st Street
New York, New York 10020

Re: Don R. Daseke, Mary R. Daseke &
Margaret M. Daseke; also d/b/a Daseke
Investment Associates & Daseke Option
Associates v. Abraham & Co. Inc. and
Merkin & Co., Inc.
Arbitration No. 1310 0693 74

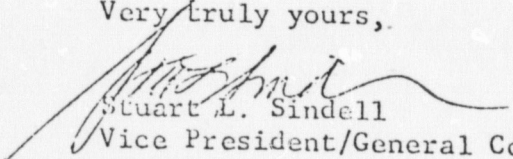
Dear Miss Maltz:

Enclosed is the Answer of Abraham & Co. Inc. to the Statement of Claim filed by the above claimants against Abraham & Co. Inc. on July 16, 1974.

We assume that this matter will be consolidated with the action previously filed by us against Don R. Daseke, Mary R. Daseke & Margaret M. Daseke; d/b/a Daseke Option Associates (Arbitration No. 1310 0693 74).

We thank you for your cooperation in this matter.

Very truly yours,


Stuart L. Sindell

Vice President/General Counsel

SLS/hd

cc. Warren W. Eginton, Esq.
Cummings & Lockwood
P. O. Box 120
Stamford, Connecticut 06904

EXHIBIT C

100.

DON R. DASKE, MARY R. DASKE AND
MARGARET M. DASKE D/B/A DASKE
OPTION ASSOCIATES AND DASKE
INVESTMENT ASSOCIATES, Plaintiffs,
-v-
ABRAHAM & CO., INC., MERKIN & CO.,
INC., CARL SLOVE, JOSEPH A. COTTLIEB
AND JULIUS CHERNY, Defendants.

SERVED	5/29/75
RECEIVED	5/30/75
FILED	
CHECKED	
INDEXED	5/30/75

74 Civ. 4357

This is a motion by defendants Abraham and Cottlieb for an order staying prosecution of the action against them, pending arbitration under a written arbitration agreement, and compelling plaintiffs to proceed with arbitration. 9 U.S.C. §§ 3, 4

Plaintiffs are three individuals who are partners (in differing combinations) of Daske Option Associates (DOA) and Daske Investment Associates (DIA). The chief figure of the three plaintiffs is Don, who directed all relevant moves and is experienced, knowledgeable, and sophisticated in financial matters. Don is chief officer of Option Account Service, Inc., an investment adviser registered with the SEC (15 U.S.C. § 80b-3); he is also chief officer of Daske & Co., Inc., a member of National Association of Securities Dealers (15 U.S.C. § 78o-3).

Abraham at all relevant times was a registered broker-dealer and a member of the New York Stock Exchange. Cottlieb was senior vice-president of Abraham.

Merkin is a registered broker-dealer and a member of the New York Stock Exchange. Cherny is a vice-president of Merkin and Slove is a registered representative of Merkin.

DOA and DIA had margin option writing accounts at a brokerage firm where Slove handled the accounts. In June 1973, Slove moved to Merkin, transferring the two accounts to Merkin. The arrangement was that orders were given to and executed by Merkin but the accounts were carried on the books of Abraham and all paper work (such as confirmations, monthly statements, etc.) was done by Abraham. Apparently Abraham supplied the money for financing the margin accounts. The accounts were with Abraham and there was a broker-customer relationship between Abraham and plaintiffs. Merkin was the introducing broker.

It has been said that 'the Securities Act was drafted with an eye to the disadvantages under which buyers labor'.

Wilko v. Swan, 346 U.S. 427, 435 (1953) As has already been seen, the plaintiffs here did not labor under any such disadvantages. They knew as much as Abraham and Merkin. Moreover, their accounts were not the normal margin accounts for buying and selling shares of stock. They were "option writing accounts" by which apparently is meant that plaintiffs would sell on margin "puts" and "calls" which had to be endorsed by the broker, Abraham. According to Abraham, plaintiffs employed "professional option hedging strategies" and their accounts had a "peculiar and complex make-up".

according to Don

In October 1973, plaintiffs were notified, apparently by Abraham, that the two accounts did not have adequate margin. According to Don, he met with Abraham and Merkin and was told that he would be allowed to continue to trade in the accounts.

A written agreement with Abraham, dated November 1, 1973, was executed by Don and Mary for all plaintiffs. This agreement contained an arbitration clause.

On May 20, 1974, following "a sharp decline in the market", Abraham demanded additional margin of \$300,000 which plaintiffs failed to furnish. Abraham liquidated a part of the accounts.

On May 29, Don, after having retained and consulted with counsel, wrote to Abraham to protest its actions and to notify that plaintiffs would seek dollar damages (but not an injunction) against Abraham and Merkin (it is not clear whether Merkin was claimed to be liable).

On June 20, Abraham wrote Don demanding payment of its margin loans, in default of which its rights would be submitted to arbitration. The letter notified Don that Abraham would choose the arbitration forum unless Don made the selection within the agreed period.

On June 26, Don wrote American Arbitration Association (AAA) that plaintiffs elected to submit their disputes with Abraham and Merkin to arbitration. A copy of the "margin agreements" was sent to AAA; it was noted that the agreements provided "that controversies are to be settled by arbitration".

Abraham then served a demand for AAA arbitration dated July 1 together with a statement of claim against Don and Mary as DOA partners. AAA began administration of this first arbitration.

On July 12, Don and Mary, by counsel, filed an answer in the first arbitration.

Under date of July 12, all three plaintiffs, by counsel,

gave notice of a second AAA arbitration against Abraham and Merkin. This covered both accounts, DIA as well as DOA. There was a lengthy statement of claim by plaintiffs (dated July 16). The second arbitration papers were signed by counsel, who suggested that the two arbitrations should be "joined".

AAA did administer the two arbitrations jointly under one case number.

On July 19, Abraham filed its answer in the second arbitration.

On August 16, AAA announced the appointment of the first arbitrator and submitted to the parties a second list of arbitrators.

In September, Merkin commenced a proceeding in the state court to stay the second arbitration. Merkin claimed that since it did not sign any agreements with plaintiffs, it was not bound by any arbitration clause.

By agreement of the parties, the AAA arbitrations were stayed, pending the state court decision.

Plaintiffs in consultation with counsel then concluded not to oppose Merkin in the state court but to commence an action in this Court. Under date of November 19, counsel for plaintiffs advised AAA that they would not proceed with arbitration. Abraham promptly notified AAA that it would oppose withdrawal of plaintiffs from arbitration.

This action was commenced on November 12, 1974. We are told for movants (without contradiction by plaintiffs) that the complaint here is "identical" to the statement of claim by them in the second arbitration.

On the foregoing factual situation, decision of the motion turns on whether Wilko v. Swan, 346 U.S. 427 (1953) is applicable. It is concluded that Wilko is not applicable.

Clearly an agreement to arbitrate future disputes under the 1933 and 1934 Acts cannot be enforced. However, agreements to arbitrate, made after such a dispute has arisen, may be enforced. Coenen v. E. W. Pressprich & Co., 453 F.2d 1209 (2d Cir.), cert. denied, 408 U.S. 949 (1972). Noting that Wilko had left this question open, our Court of Appeals said: "In subsequent decisions, however, courts have held that agreements to arbitrate made after a dispute has arisen are valid" (453 F.2d at 1213, citing with approval two decisions of other circuits). True, in Coenen both parties were members of the New York Stock Exchange but this was not stated to qualify

the general language quoted. Moreover, while Don is not a member of the Exchange, he is not an ordinary investor. He is himself in the securities business, is chief officer of a registered investment adviser, and is chief officer of a member of the NASD.

In the case at bar, there was an express or implied agreement by plaintiff to arbitrate made after the disputes had arisen.

There is an express agreement to arbitrate in the June 26, 1974 letter in which Don states the "election" of DOA and DIA "to submit their disputes with Abraham & Co., Inc. and Merkin & Co., Inc. to arbitration . . .".

There is an express agreement to arbitrate in the demand by plaintiffs for arbitration dated July 12, 1974. This is a demand for arbitration under "written contracts dated 6/73, 7/73, and 11/73" (evidently there were three agreements to arbitrate, of which only one was made part of the papers submitted).

The two documents just mentioned refer to Merkin as well as Abraham but nowhere is it suggested that the choice of arbitration is dependent on Merkin's consent thereto. If Merkin is no longer a party to the arbitration, this is the result of a decision by plaintiffs themselves not to enforce their rights against Merkin; plaintiffs gave up these rights voluntarily.

There is an implied agreement to arbitrate based on all the participation by plaintiffs in the arbitration proceedings until the commencement on November 12, 1974 of the case at bar.

Plaintiffs had the advice of counsel from at least May 29, 1974, and Don himself is in the securities business; he is not an ordinary investor. After the dispute here arose, plaintiffs made an "informed, deliberate, and explicit decision to have [their] claims arbitrated . . .". *Cobb v. Lewis*, 436 F.2d 41, 49 (3rd Cir. 1974).

There seems no good reason why the arbitration agreement should not be enforced.

Movent Cottlieb is not a party to the arbitration agreement but plaintiffs do not make a point of this. Resolution of the dispute with Abraham would seem to resolve the dispute with Cottlieb; in any event, if plaintiffs prevail in arbitration

with Abraham, they can thereafter proceed here against Gottlieb if they choose.

The motion is granted. Settle order on notice.

Dated: MAY 29 1975

INER B. WYATT
United States District Judge

-5-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

DON R. DASEKE, MARY R. DASEKE	:	
AND MARGARET M. DASEKE D/B/A	:	CIVIL NO. 4957
DASEKE OPTION ASSOCIATED AND	:	
DASEKE INVESTMENT ASSOCIATES,	:	
	:	
Plaintiffs,	:	
	:	AMENDED
-against-	:	VERIFIED COMPLAINT
	:	
ABRAHAM & CO., INC., MERKIN & CO.,	:	
INC., CARL SLOVE, JOSEPH A. GOTTLIEB	:	JUDGE WYATT
AND JULIUS CHERNY,	:	
	:	
Defendants.	:	

----- X

Plaintiffs, by their attorneys for their verified complaint respectfully allege:

FIRST COUNT

1. This is a civil action for damages arising under the Securities Exchange Act of 1934, as amended, (15 U.S.C. §78a, et. seq.) (the "1934 Act") and the Rules and Regulations promulgated thereunder, particularly Sections 6, 7, 10(b), 19, 20 and 29 (15 U.S.C. §§78f, 78g, 78j(b), 78s, 78t and 78cc) and Rules 10b-3, 10b-5 and Regulation T of the Regulations of the Board of Governor's of the Federal Reserve System (12 C.F.R. §220) ("Reg. T") and the laws and statutes of the State of New York. This court has jurisdiction under 15 U.S.C. §78aa, 78bb; and the doctrine of pendent jurisdiction.

2. Venue lies in the Southern District of New York under 15 U.S.C. §78aa since all the defendants transact business within the District.

3. Plaintiffs Don R. Daseke and Mary R. Daseke reside at 32 Mimosa Drive, Greenwich, Connecticut and at all times relevant to this complaint have been and still are residents of the State of Connecticut.

4. Plaintiff Margaret M. Daseke resides at 29 Crossways, Chappaqua, New York and at all times relevant to this complaint has been and still is a resident of the State of New York.

5. Plaintiff Daseke Option Associates ("DOA") is an investment partnership whose sole general partners are Don R. Daseke and Mary Ruth Daseke. Plaintiff's principal place of business is 6 Corporate Park Drive, White Plains, New York.

6. Plaintiff Daseke Investment Associates ("DIA") is an investment partnership whose sole general partners are Don R. Daseke and Margaret M. Daseke. Plaintiff's principal place of business is 6 Corporate Park Drive, White Plains, New York.

7. Defendant Abraham & Co., Inc. ("Abraham") is a Delaware corporation having its main office at 120 Broadway, New York, New York. Abraham is a registered broker dealer under the Federal Securities laws and a member organization of the New York Stock Exchange.

8. Defendant Merkin & Co., Inc. ("Merkin") is a New York corporation having its main office at 100 Wall Street, New York, New York. Merkin is a registered broker dealer under the Federal Securities laws and a member organization of the New York Stock Exchange.

9. Defendant Joseph A. Gottlieb is Senior Vice President of defendant Abraham and at all times relevant to this complaint has been and still is a resident of New York.

10. Defendant Carl Slove is a registered representative of defendant Merkin and at all times relevant to this complaint has been and still is a resident of New York.

11. Defendant Julius Cherny was Vice President of defendant Merkin and at all times relevant to this complaint has been and still is a resident of New York.

12. In June 1973 plaintiffs entered into an arrangement with Carl Slove, representing Merkin, and Abraham to open securities accounts for plaintiffs (the "Accounts"). Under this arrangement plaintiffs signed customer agreements with defendant Abraham who was to carry the Accounts on its books.

13. Pursuant to this arrangement, all of plaintiff's orders were routed through Merkin and then executed by Abraham. Upon information and belief all administrative and billing functions were handled by Abraham.

14. Upon opening the Accounts, plaintiffs executed certain margin and option agreements required by defendants. These agreements provided, inter alia, that the Accounts would be subject to all applicable rules, regulations, customs and usages of the New York Stock Exchange and the Chicago Board of Options.

15. The Accounts are margined option writing accounts. Plaintiffs purchase and sell securities on margin and write "put" and "call" options on various securities.

16. In connection with transactions in the Accounts, defendants were required to comply with applicable federal law and regulations as well as the margin rules and regulations of the Federal Reserve Board, the New York Stock Exchange and so-

called house margin rules of defendants. In particular, the defendants were required to adhere to Section 7 of the Securities Exchange Act of 1934 and the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, more specifically Regulation T, 12 C.F.R. §220 ("Reg. T") and New York Stock Exchange Rule 431.

17. Reg. T places on defendants an absolute affirmative duty to notify plaintiffs as soon as the Accounts become undermargined. If within five days after this notice plaintiffs have not sold enough securities or transferred additional equity into the Accounts to restore the required margin level the regulation mandates that defendants must immediately cancel any transactions insofar as it is necessary to bring them into compliance and restrict further dealings in the Accounts.

18. Defendants in direct violation of Reg. T failed to notify plaintiffs when the Accounts first went into undermargined status. Thereafter, defendants failed to provide plaintiffs with current information concerning the margin status and permitted plaintiffs to transact in the Accounts in violation to Reg. T.

19. On the occasions when plaintiffs were notified that the Accounts were undermargined no action was taken by the plaintiffs within the seven day time period provided by Reg. T. Despite plaintiffs' inaction defendants in violation of Reg. T did not immediately liquidate the Accounts.

20. During the period September 1973 to April 1974, defendants solicited and/or executed numerous orders to purchase securities for the accounts while defendants knew or should have known the Accounts were in an undermargined status,

and therefore each such action was in violation of the aforementioned laws, rules, regulations, customs and usages.

21. Notwithstanding their duty to constantly monitor the margin position of the Accounts to assure compliance with Reg. T and other applicable rules and regulations, defendants reported the margin position for each of the Accounts to plaintiffs only 5 times in the eight month period from September 1973 to May 1974.

22. Even on these few occasions, it appears that defendants erroneously computed the margin status of the Accounts, as more particularly set forth in paragraphs 23 through 25 hereof. As a consequence of defendants' erroneous calculations and breach of their duty to plaintiffs, plaintiffs were not properly informed as to the margin status of the Accounts and the fact that the Accounts were in violation of Reg. T.

23. In addition to the generally erroneous calculations referred to in paragraph 22 hereof, defendants failed to compute the plaintiffs' short accounts at the market value of their short positions ("mark to the market") as required by Reg. T. As a result, plaintiffs' margin indebtedness was consistently understated.

24. Defendants failed to obtain "substantial additional margin" on options maturing more than 6 months and 10 days from the date of issuance and on securities that may be difficult to liquidate promptly in violation of Rule 431(d)(1) and (2) of the New York Stock Exchange.

25. Defendants failed to recompute the margin status of the Accounts when transactions in the Accounts transformed existing option contracts into unhedged or "naked" options and failed to secure additional margin required as a result thereof.

26. Defendants permitted plaintiffs to withdraw \$10,000 and \$2,500 from the Accounts on September 6, 1973 and October 12, 1973, respectively, thereby falsely representing that the Accounts were in margin compliance and inducing plaintiffs to continue their option writing activities. In fact, the Accounts were in margin violation at the time of the October withdrawal and there may have been a deficit in the Accounts' equity position. Defendants similarly misled plaintiffs as to the margin status of the DOA account by permitting plaintiffs to withdraw \$6,000 from the DOA account on May 22, 1974.

27. If defendants had promptly notified plaintiffs of the margin violations and had expeditiously implemented the remedial course of action mandated by Reg. T plaintiffs would have secured more favorable prices for securities disposed of to reduce margin indebtedness and their equity in the Accounts would have been protected.

28. Defendants' failure to comply with Reg. T caused plaintiffs additional damages by reason of increased interest expense and substantial brokerage fees charged to the Accounts.

SECOND COUNT

1-28. Plaintiffs hereby incorporate by reference paragraphs 1 through 28 inclusive of the First Count of this Complaint and reallege said paragraphs as paragraphs 1 through 28 of this Count.

29. The foregoing acts of the defendants are in violation of Sections 6 and 19 of the Securities Exchange Act of 1934, as amended (15 U.S.C. §78f and 78s) and New York Stock Exchange Rule 431 Sections b and d(2), which provide as follows:

"(b) The margin which must be maintained in margin accounts of customers, whether members, allied members, member organizations or non-members, shall be as follows:

"(1) 25% of the market value of all securities 'long' in the account; plus

"(2) \$2.50 per share or 100% of the market value, in cash, whichever amount is greater, of each stock 'short' in the account selling at less than \$5.00 per share; plus

"(3) \$5.00 per share or 30% of the market value, in cash, whichever amount is greater, of each stock 'short' in the account selling at \$5.00 per share or above; plus

"(4) 5% of the principal amount or 30% of the market value, in cash, whichever amount is greater, of each bond 'short' in the account."

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"(d) (2) Puts, Calls and Other Options. - No put or call carried for a customer, shall be considered of any value for the purpose of computing the margin required in the account of such customer.

"This issuance or guarantee for a customer of a put or a call shall be considered as a security transaction subject to paragraph (a) of this Rule.

"For the purpose of paragraph (b) of this Rule such puts and calls shall be considered as if they were exercised.

"Each such put or call shall be margined separately and any difference between the market price and the price of a put or call shall be considered to be of value only in providing the amount of margin required on that particular put or call. Substantial additional margin must be required on options issued or guaranteed with an unusually long period of time to expiration, or written on securities which are subject to unusually rapid or violent changes in value, or which do not have an active market on a recognized exchange, or where the securities subject to option cannot be liquidated promptly."

THIRD COUNT

1-28. Plaintiffs hereby incorporate by reference paragraphs 1 through 28 inclusive of the First Count of this Complaint and allege said paragraphs as paragraphs 1 through 28 of this Count.

31. Plaintiffs, in October of 1973, when finally notified of the undermargined status of the Accounts, approached defendants to discuss the matter. Defendants assured plaintiffs that no corrective action need be taken in respect to these accounts and agreed with plaintiffs that plaintiffs would be allowed to continue their investment program aimed at improving the Accounts' positions.

32. These representations by defendants, on information and belief made with intent to defraud or with reckless disregard for the truth, were made to induce and did induce plaintiffs to execute numerous additional transactions in the Accounts and to refrain from asserting their right to liquidate the Accounts on their own terms.

33. Then in May of 1974 defendants unilaterally and precipitously implemented a liquidating course of action with respect to the Accounts, purportedly to bring them into margin compliance. These actions were in total contradiction to all of the defendants' prior representations and course of conduct, and were without reason, since there had been no deterioration of the equity in the Accounts.

34. This course of action in fact worsened the margin status of the Accounts, substantially eroded plaintiffs' equity, and was in violation of applicable custom and usage.

35. With a diligent and patient effort, plaintiffs accumulated almost 10% of the outstanding warrants of Braniff Airways, a security listed on the American Stock Exchange, thereby becoming one of the largest holders of this issue. Because of the short supply available for trading, it was under the circumstances necessary to make these purchases over a two year period.

36. Without authorization defendants sold practically the entire position in less than a 30 day period. This action by defendants failed to secure the most advantageous prices and caused plaintiffs the loss of their position, which cannot be replaced without substantial expense.

37. Without the approval or authorization of plaintiffs, defendants debited the Accounts in the amount of approximately \$94,000 to purchase call options on Common Stock of American Motors Corp., Braniff Airways and Loews, Inc. to cover outstanding call options written by the Accounts. These actions were taken contemporaneously with defendants' sales of various securities of these issuers from the Accounts which were covering such outstanding options.

38. The aforementioned debits, which increased the Accounts' margin indebtedness, would not have been required had defendants not sold said securities. Defendants stated these actions were necessary to bring the Accounts into margin compliance. In fact, these unauthorized and illogical actions resulted in reducing both the dollars and the percentage of equity in the Accounts.

39. Defendants liquidated the Accounts in such a manner as to cause plaintiffs significant additional risk and possible future damages from outstanding option contracts which

were negligently and wilfully left exposed to future market fluctuations.

40. Defendants refused to utilize the services of non-member brokerage firms ("third-market" brokers) to execute certain transactions for the Accounts. The services of such brokers would have substantially reduced the commission dollars paid by plaintiffs to defendants and possibly would have resulted in the realization of more favorable purchase prices for the liquidated securities.

41. These courses of action were implemented by defendants for their benefit, in total disregard of their duties to the plaintiffs and in such a way as to maximize commissions and interest paid by the Accounts.

42. Through said course of action defendants unnecessarily depleted plaintiffs' equity positions in the Accounts without any corresponding improvement in the margin status. As a result plaintiffs have suffered and will continue to suffer substantial economic losses in relation to the Accounts. There were alternative courses of action available to defendants which would have achieved a comparable reduction of margin indebtedness in the Accounts while preserving plaintiffs' equity position.

43. The foregoing acts of defendants were manipulative and deceptive devices whose purpose was to defraud plaintiffs in violation of Section 10(b) of the 1934 Act and the rules promulgated thereunder, specifically Rules 10b-3 and 10b-5. This is evidenced by the numerous actions undertaken by defendants hereinbefore and hereinafter set forth which neither benefited plaintiffs nor brought the Accounts into compliance with the applica-

ble rules and regulations. The sole purpose of these actions was to benefit defendants and promote their financial gain in derogation of plaintiffs' legal rights and financial positions.

FOURTH COUNT

1-43. Plaintiffs hereby incorporate by reference paragraphs 1 through 43 inclusive of the Third Count of this Complaint and reallege said paragraphs as paragraphs 1 through 43 of this Count.

44. The foregoing acts of the defendants are in violation of various sections of the 1934 Act, and therefore the agreements alleged between defendants and plaintiffs have been and are hereinafter void under §29 of the 1934 Act. Plaintiffs thus are relieved of all past and future responsibilities under said agreements. In particular, all brokerage fees, interest and other charges assessed by defendants and paid by the plaintiffs in connection with the aforementioned illegal activities should be immediately refunded with interest.

FIFTH COUNT

1-43. Plaintiffs hereby incorporate by reference paragraphs 1 through 43 inclusive of the Third Count of this Complaint and reallege said paragraphs as paragraphs 1 through 43 of this Count.

45. The aforementioned acts constitute negligent and reckless conduct on defendants' behalf.

SIXTH COUNT

1-43. Plaintiffs hereby incorporate by reference paragraphs 1 through 43 inclusive of the Third Count of this Complaint

and reallege said paragraphs as paragraphs 1 through 43 of this Count.

46. The aforementioned acts were solely for the benefit and financial gain of defendants in violation of contractual duties owed to plaintiffs. Said actions were also an abuse of defendants' fiduciary relationship with plaintiffs and constituted fraudulent conduct actionable under the laws of the State of New York.

WHEREFORE, Plaintiffs demands judgment against the Defendant as follows:

1. Damages in an amount in excess of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for the loss sustained by plaintiffs as alleged herein, and for such future losses as the evidence shows may be sustained by plaintiffs after the date of this Complaint.
2. An order requiring defendants to account and pay over to plaintiffs all brokerage fees, interest and other charges paid to them by plaintiffs in connection with the acts herein complained of.
3. An order requiring defendants to restore plaintiffs' valuable position in Braniff warrants, or in the alternative, that defendants be required to compensate claimants for the loss of their valuable position.
4. Punitive damages in the sum of ONE MILLION DOLLARS (\$1,000,000).
5. The costs and disbursements of this action, including attorneys' fees.
6. Such other and further relief of an equitable or

legal nature, or both, as to the Court may seem just and proper.

Dated at Stamford, Connecticut this 9th day of June, 1975.



Warren W. Eginton

Attorney for the Plaintiff
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One Atlantic Street
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(203) 327-1700

LOCAL COUNSEL

Robert Conkling, Esq.
Bleakley, Platt, Schmidt & Fritz
120 Broadway
New York, New York

VERIFICATION

STATE OF NEW YORK)

COUNTY OF *Westchester*)

ss: City of *White Plains, N.Y.*
June , 1975

DON R. DASEKE, being duly sworn, says that he is an individually named plaintiff and a general partner in both named investment partnership plaintiffs in the above-entitled proceedings; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

Don R. Daseke

DON R. DASEKE

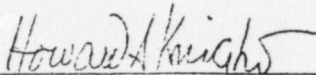
Subscribed and sworn to before
me this *4th* day of June, 1975.

Eugenia B. Fischer
Notary Public

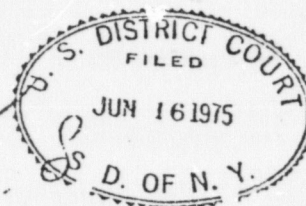
EUGENIA B. FISCHER
NOTARY PUBLIC STATE OF NEW YORK
NO. 60-6304280
QUALIFIED IN WESTCHESTER COUNTY
TERM EXPIRES MARCH 20, 1976

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Amended Complaint was hand delivered to Harvey Ishofsky, Esq., Brauner, Baron, Rosenzweig & Kliger, 120 Broadway, New York, New York and Stephen Lewis, Reavis & McGrath, One Chase Manhattan Plaza, New York, New York, on this 9th day of June, 1975.


Howard A. Knight

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



DON R. DASEKE, MARY R. DASEKE AND
MARGARET M. DASEKE D/B/A DASEKE
OPTION ASSOCIATES AND DASEKE
INVESTMENT ASSOCIATES,

Plaintiffs,

-against-

ABRAHAM & CO. INC., MERKIN & CO., INC.
CARL SLOVE, JOSEPH A. GOTTLIEB AND
JULIUS CHERNY,

Defendants.

CIVIL NO. 4957/74

JUDGE WYATT

ORDER

This cause came on for hearing on May 16, 1975, on motion of defendants ABRAHAM & CO. INC. and JOSEPH A. GOTTLIEB for an order staying prosecution of this action as against them pending arbitration under a written arbitration agreement, pursuant to the provisions of the United States Arbitration Act, 9 U.S.C. §§3,4,

And the Court having heard the argument of counsel and being fully advised, it is

ORDERED, that the motion of defendants ABRAHAM & CO. INC. and JOSEPH A. GOTTLIEB be granted and that this action be stayed as against said defendants pending a final determination of the two arbitration proceedings, to which the plaintiffs and defendant ABRAHAM & CO. INC. are parties, which are now pending before and being jointly administered by the American Arbitration Association as Case No. 1310 0693 74, and it is

ORDERED, that plaintiffs proceed with the arbitration of their disputes with defendant ABRAHAM & CO. INC. in the aforesaid proceedings before the American Arbitration Association.

Myer Bleyall
United States District Judge

Dated: June 13, 1975,
AT NEW YORK, N.Y.

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MICROFILM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DON R. DASEKE, MARY R. DASEKE AND
MARGARET M. DASEKE D/B/A DASEKE
OPTION ASSOCIATES AND DASEKE
INVESTMENT ASSOCIATES,

Plaintiffs, : 74 Civ. 4957

-against-

ABRAHAM & CO., INC., MERKIN &
CO., INC. CARL SLOVE, JOSEPH A.
GOTTLIEB AND JULIUS CHERNY,

Defendants. :
-----X

NOTICE OF APPEAL

SIR:

Notice is hereby given that the plaintiffs, Don R. Daseke, Mary R. Daseke and Margaret M. Daseke d/b/a Daseke Option Associates and Daseke Investment Associates, above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the order entered in this action on 16 June 1975 ordering that plaintiffs proceed with the arbitration of their disputes with the defendant Abraham & Co., Inc. in proceedings before the American Arbitration Association, and ordering that this action be stayed as against the defendant Abraham & Co., Inc. and Joseph A. Gottlieb pending a final determination of the aforesaid arbitration proceedings.

Dated: Stamford, Connecticut
June 20, 1975

CUMMINGS & LOCKWOOD
(Attorneys for Plaintiffs)

By 

A Member of the Firm
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TO:

The Clerk
United States District Court
United States Courthouse
Foley Square
New York, New York 10007

